

No. 16461 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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UNITED STATES OF AMERICA,  
Appellant,  
vs.

ARTHUR E. BAKER, DORIS M. BAKER,  
JOHN L. ROACH and BETTIE JO ROACH,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
District of Arizona

FILED

NOV 24 1959



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Appeal from the United States District Court for the  
District of Arizona



## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	10
Appeal:	
Clerk's Certificate to Record on .....	187
Notice of .....	32
Statement of Points on .....	190
Attorneys of Record .....	1
Clerk's Certificate to Record on Appeal .....	187
Complaint .....	3
Ex. A—Description of Property .....	5
Declaration of Taking .....	6
Final Judgment .....	27
Minute Entry December 15, 1958—Order Denying Motion for New Trial .....	27
Motion for New Trial .....	25
Notice of Appeal .....	32
Requested Instructions .....	13
Statement of Points on Appeal.....	190
Stipulation Re Exhibits .....	192

	INDEX	PAGE
Verdict .....		25
Transcript of Proceedings .....		33
Instructions to the Jury .....		177
Witnesses:		
Atha, Herbert V.		
—direct .....		135
Baker, Arthur E.		
—direct .....		149
—cross .....		158
Blake, Robert L.		
—direct .....		120
—cross .....		131
—redirect .....		133
—recross .....		135
Cavanagh, Bert		
—direct .....		95
—cross .....		113
—redirect .....		118
Combs, Louis J.		
—direct .....		45
—redirect .....		48
Englehorn, Vern A.		
—direct .....		158
—cross .....		167
—redirect .....		177

## Witnesses—(Continued):

Hansen, J. Leslie

—direct .....	49
—cross .....	58
—redirect .....	85
—recross .....	89

McGrew, R. R.

—direct .....	34, 91
—cross .....	94







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In the United States District Court  
for the District of Arizona

No. Civ. 2597 Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

217.99 ACRES OF LAND, More or Less, Situate  
in the County of Maricopa, State of Arizona;  
ARTHUR E. BAKER, et al., and UNKNOWN  
OWNERS,

Defendants.

### COMPLAINT IN CONDEMNATION

1. This is an action of a civil nature brought by the United States of America at the request of the Secretary of the Air Force for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); Sections 2663 and 9773 of Title 10, United States Code, which authorize the acquisition of land for military purposes; Section 505 of the Act of Congress approved September 28, 1951 (Public Law 155, 82nd Congress), which act authorizes acquisition of the

land, and the Act of Congress approved July 27, 1956 (Public Law 814, 84th Congress), which act appropriated funds for such purposes.

3. The use for which the property is to be taken is for military purposes.

4. The interest in the property to be acquired is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

5. The property so to be taken is described in the Exhibit A hereto attached.

6. The persons having or claiming an interest in the property whose names are now known are:

Tract No. H-800

Tacy Claggett Moyer, formerly Tacy Claggett, wife of C. H. Moyer.

Tract No. H-801

Arthur E. and Doris M. Baker, husband and wife.  
John L. and Bettie Jo Roach, husband and wife.

7. The County of Maricopa, State of Arizona, and the State of Arizona may have or claim an interest in the property by reason of taxes and assessments due and exigible.

8. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the Plaintiff and such persons are made parties to the action under the designation "Unknown Owners."

Wherefore, the Plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

JACK D. H. HAYS,

United States Attorney for  
the District of Arizona;

/s/ WILLIAM E. EUBANK,

Assistant U. S. Attorney.

Trial by jury of the issue of just compensation is demanded by Plaintiff.

## EXHIBIT A

Tract No. H-800

The Southwest one-quarter of Section 3, Township 2 North, Range 1 West, Gila and Salt River Meridian, in the County of Maricopa, State of Arizona.

Except the West 1200.00 feet of said Southwest one-quarter.

Containing 85.59 acres, more or less, including 1.08 acres, more or less, in Glendale Avenue.

Tract No. H-801

Two parcels of land in the County of Maricopa, State of Arizona, described as follows:

Parcel 1: The Southeast  $\frac{1}{4}$  of Section 3, Township 2 North, Range 1 West, Gila and Salt River Meridian.

Except the East 442.00 feet thereof.

Parcel 2: The North 100 feet of the East 442.00 feet of said Southeast  $\frac{1}{4}$  of Section 3.

Containing 132.40 acres, more or less, including 1.72 acres, more or less, in roads.

[Endorsed]: Filed March 11, 1957.

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[Title of District Court and Cause.]

### DECLARATION OF TAKING

To the Honorable, The United States District Court:

I, the undersigned, James H. Douglas, Under Secretary of the Air Force of the United States of America, do hereby make the following declaration by direction of the Secretary of the Air Force:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); Sections 2663 and 9773 of Title 10, United States Code, which authorize the acquisition of land for military purposes; Section 505 of

the Act of Congress approved September 28, 1951 (Public Law 155, 82nd Congress), which act authorizes acquisition of the land, and the Act of Congress approved July 27, 1956 (Public Law 814, 84th Congress), which act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for expanding needs and requirements of the Department of the Air Force and other military uses incident thereto. The said lands have been selected under the direction of the Secretary of the Air Force for acquisition by the United States for use in connection with Luke Air Force Base, Maricopa County, State of Arizona, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the lands being taken is set forth in Schedule "A," attached hereto and made a part hereof, and is a description of the same lands described in the petition in the above-entitled cause.

3. The estate hereby taken for said public uses is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by the undersigned as just compensation for the said lands, with all buildings

and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said lands probably will be within any limits prescribed by law on the price to be paid therefor.

In Witness Whereof, the undersigned, the Under Secretary of the Air Force, hereunto subscribes his name by direction of the Secretary of the Air Force, this 26th day of February, A.D. 1957, in the City of Washington, District of Columbia.

/s/ JAMES H. DOUGLAS,  
Under Secretary of the  
Air Force.

#### Schedule "A"

The lands which are the subject matter of this Declaration of Taking aggregate 217.99 acres, more or less, situate and being in the County of Maricopa, State of Arizona. The description of the lands taken together with the names and addresses of the purported owners thereof and a statement of the sum estimated to be the just compensation therefore is as follows:

Tract No. H-800

The Southwest one-quarter of Section 3, Township 2 North, Range 1 West, Gila and Salt River Meridian, in the County of Maricopa, State of Arizona.

Except the West 1200.00 feet of said Southwest one-quarter.

Containing 85.59 acres, more or less, including 1.08 acres, more or less, in Glendale Avenue.

Name and Address of Purported Owner:

Tacy Clagett Moyer, formerly Tacy Clagett, wife of C. H. Moyer, 115 West Rose Lane, Phoenix, Arizona.

Estimated Compensation:

Fifty Four Thousand and No/100 Dollars (\$54,000.00).

Tract No. H-801

Two parcels of land in the County of Maricopa, State of Arizona, described as follows:

Parcel 1: The Southeast  $\frac{1}{4}$  of Section 3, Township 2 North, Range 1 West, Gila and Salt River Meridian.

Except the East 442.00 feet thereof.

Parcel 2: The North 100 feet of the East 442.00 feet of said Southeast  $\frac{1}{4}$  of Section 3.

Containing 132.40 acres, more or less, including 1.72 acres, more or less, in roads.

## Names and Addresses of Purported Owners:

Arthur E. and Doris M. Baker, husband and wife,  
Route 1, Box 735, Peoria, Arizona.

John L. and Bettie Jo Roach, husband and wife,  
Route 1, Box 735, Peoria, Arizona.

## Estimated Compensation:

Eighty-Seven Thousand and No/100 Dollars  
(\$87,000.00).

The gross sum estimated by the acquiring agency  
to be the just compensation for the lands hereby  
taken is One Hundred Forty-One Thousand and  
No/100 Dollars (\$141,000.00).

[Endorsed]: Filed March 11, 1957.

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[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN  
CONDEMNATION

Come Now the defendants, Arthur E. Baker,  
Doris M. Baker, John L. Roach and Bettie Jo  
Roach, through their attorneys undersigned, and  
for their answer to the Government's Complaint  
herein admit, deny and allege as follows:

I.

Admit that this is an action of a civil nature  
brought at the request of the Secretary of the Air  
Force for the taking of the defendants' property

under the power of eminent domain and for the ascertainment and award of just compensation to the defendants, pursuant to the Fifth Amendment to the United States Constitution.

## II.

Admit that the Government relies upon those Acts of Congress set forth in Paragraph II of its Complaint as authority for this exercise of the power of eminent domain.\*

## III.\*

## IV.

Admit the allegations contained in Paragraphs IV, V, VI, VII and VIII of the Government's Complaint.

## V.

In response to the action taken herein by United States Government, these answering defendants allege that the Government's appraisal of the said Tract No. H-801 including severance damages to the balance of the defendants' land in question and the Government's tender of said appraised sum to these defendants, as just compensation for the taking of the land herein, is and was a grossly inadequate sum.

These defendants are informed and believe and therefore allege that the highest, best, and most available use of the lands in question, within the

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\*[Note: Remainder of Paragraph II and entire Paragraph III stricken—order of 11/18/57.]

reasonably near future, is for the purpose and use of a subdivision for residential purposes, and that under these circumstances the lands in question presently have a fair market value of not less than \$1,200.00 per acre, which sum would total approximately \$158,400.00, and which said sum these defendants herewith allege to be equivalent to fair and just compensation for the land herein sought to be taken by the Government. Further, these defendants allege they will incur damages to the balance of their lands adjacent to the said Tract No. H-801, in the total sum of \$40,000.00.

Wherefore, these answering defendants pray judgment against the United States Government as follows:

1. That they receive a trial by jury on the issue of just compensation;

2. That they be awarded the sum of \$158,400.00 as and for the fair market value of the lands herein, and as and for severance damages to the balance of the lands owned by these defendants and which are adjacent to Tract No. H-801, they be awarded the sum of \$40,000.00.

WHITNEY & LaPRADE,

By /s/ PAUL W. LaPRADE,  
Attorneys for Defendants Arthur E. Baker, Doris  
M. Baker, John L. Roach and Bettie Jo Roach.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 30, 1957.

REQUESTED INSTRUCTIONS\*

Plaintiff's Requested Instruction No. 1

You are instructed that this case involves the taking by the United States of America for a public purpose of the fee simple estate, or entire title, to Tract No. H-801 consisting of 132.40 acres described as follows:

Tract No. H-801

Two parcels of land in County of Maricopa, State of Arizona, described as follows:

Parcel 1: The SW $\frac{1}{2}$ , Section 3, Township 2 North, Range 1 West, Gila and Salt River Base & Meridian; except the East 442.00 feet thereof.

Parcel 2: The North 100 feet of the East 442.00 feet of the SE $\frac{1}{4}$  of Section 3.

This tract, consisting of 132.40 acres, is a part of a farm unit owned by the Defendants consisting of 510.00 acres, more or less. After the Government's taking there remains 388.00 acres, more or less, in the Defendants' farm.

Given: ✓

Refused:

Given as Modified:

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\*[Note: These instructions are printed as corrected on the originals. No indication of the location of said corrections appears here.]

## Plaintiff's Requested Instruction No. 2

The taking of property by the United States Government in the exercise of its power of eminent domain under the United States Constitution implies a promise to pay just compensation therefor. Just Compensation, often referred to as market value, means compensation which is just, not only to the Defendants, but to the Government. In arriving at just compensation, or market value, you are to determine the market value of Tract No. H-801 on March 11, 1957. This date, March 11, 1957, is the date of taking, or the date on which the Government took the Defendants' tract of land. Consequently, the market value of Tract No. H-801 on March 11, 1957, is the only issue upon which you are asked to decide in this case.

Given: ✓

Refused:

Given as Modified:

## Defendants' Instruction No. 2

I instruct you that by market value is meant the amount of money that the property in question will bring if sold in the open market, under normal conditions, with a reasonable time within which to find a purchaser, the seller being willing but not obliged or forced to sell to a buyer ready, willing and able, but not obliged to buy, and being allowed a reasonable time to investigate the property and all the uses for which it is adapted.

Given: ✓

Refused:

Given as Modified:

Plaintiff's Requested Instruction No. 3

In your deliberations on market value, or just compensation, you are not to consider the price that the tract of land would sell for under special or extraordinary circumstances. You will consider only the market value of the land and as if it were sold on the open market between a willing buyer and seller under ordinary circumstances on March 11, 1957. It is not, therefore, a question of the value of the property to the Defendants, or a question of the value of the property to the Government, it is a question of market value on March 11, 1957.

Given: ✓

Refused:

Given as Modified:

Defendants' Instruction No. 3

Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid to Messrs. Roach and Baker does not depend solely upon the uses to which they have devoted their land, but is to be arrived at upon just consideration of all the uses for which it is suitable, and the highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably foreseeable

future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property was privately held.

Mississippi Boom Co. vs. Patterson,  
98 U. S. 403.

Olson vs. U. S.,  
54 S. Ct. 708.

U. S. vs. Powelson,  
63 S. Ct. 1047.

Given: ✓

Refused:

Given as Modified:

### Plaintiff's Requested Instruction No. 3B

Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from your consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value.

Olson vs. United States,  
292 U. S. 246, 257.

Given: ✓

Refused:

Given as Modified:

## Defendants' Instruction No. 4

It is first claimed by Messrs. Roach and Baker that the highest and most profitable use for which their property, to wit, 132.4 acres, was adaptable and needed on March 11, 1957, was for the use of a residential subdivision on the rear acreage and for commercial purposes on the Glendale Avenue frontage. On the other hand, the Government claims that the highest and most profitable use to which this land could have been put on March 11, 1957, was for farming purposes and uses.

The defendants, Roach and Baker, have countered with the argument that if the Government's farm usage theory is the correct one on that issue, the taking of their 132.4 acres not only deprives them of that portion of their farm, but also damages the remainder of their farm. In other words, under the Government's farm usage theory, the defendants are claiming what is called severance damages.

Given:

Refused: ✓

Given as Modified:

## Defendants' Instruction No. 6

You must first find the fair and reasonable market value of their entire holdings. You then must find the fair and reasonable market value of the remainder of the land that was left to the defendants immediately after the taking. The difference between the two figures will be the amount that they should recover.

Given:

Refused: ✓

Given as Modified:

Plaintiff's Requested Instruction No. 4

In this case, where an entire tract has been used and treated as an entity, it should be so treated in determining market value.

United States vs. Miller, *supra*

As I stated before, Tract H-801 is a part of the farm unit owned by the defendants. It is a rule of law that, in the condemnation of a part of a tract owned by the defendants, just compensation is the market value of the entire tract before the taking, minus the market value of the remaining tract after the taking of Tract H-801 on March 11, 1957. The answer will be just compensation, or market value of the tract taken by the government, plus severance damage to the remaining tract, if any. This is commonly referred to as the "Before and After Rule."

United States vs. Honolulu Plantation Co.,  
182 F. 2, 172, 175 (C.A. 9th, 1950).

Severance damage is more easily described than defined. For example, as in the case where only a part of a tract is taken from the owners, the owners' just compensation includes any element of market value arising out of the relationship of the part of the tract taken to the entire tract. The injury to this

relationship and element of market value is often spoken of as severance damage.

United States vs. Miller.

Given: ✓

Refused:

Given as Modified:

Plaintiff's Requested Instruction No. 5

The test of whether or not severance damage exists in the taking is the existence of loss or impairment in the market value of the remaining land after the taking which can be directly attributed to the taking.

United States vs. 11 Acres,  
54 F. Supp. 89, (E.D. N.Y., 1944).

Given: ✓

Refused:

Given as Modified:

Plaintiff's Requested Instruction No. 6B

In applying the "market value" standard no account is to be given to values or necessities peculiar to the Defendant or the Government, but consideration should be given only to such matters as would affect the ordinary willing buyer and seller in negotiating a fair price. To reach this result, the jury may consider all matters which would naturally influence agreement upon a price by sellers and buyers willing but not compelled to bargain. Obviously, the uses to which the property may be put

vitally affect its value. But “use” in this sense does not mean mere physical adaptability. It is use adaptability which concerns us. Since value is to be determined as of the time of taking, it is use adaptability apparent at that time. Since market value is the standard sought, it is use adaptability which would affect market value at the time of taking—that is, which would influence a seller and a buyer in arriving at a fair price then. The above considerations limit the uses which may be shown.

Olson vs. United States,

67 F. 2d 24 (affirmed U. S. S. Ct. 292  
U. S. 246).

Given: ✓

Refused:

Given as Modified:

#### Plaintiff's Requested Instruction No. 7

Comparable sales, at arms length, in the open market of real property, often referred to as similar sales, that occurred before the date of taking, are the best evidence of market value.

Welch vs. Tennessee Valley Authority,

108 F. 2, 95, 101 (C.A. 6, 1939), Cert. Den.  
309 U. S. 688.

United States vs. Honolulu Plantation Co.,

182 F. 2, 172, 176 (C.A. 9, 1950).

Kinter vs. United States,

156 F. 2, 5, 7 (C.A. 3, 1946).

Given:

Refused: ✓

Given as Modified:

Plaintiff's Requested Instruction No. 8

The Defendants and not the Government have the burden of establishing upon fair preponderance of all the evidence in the case the market value of the lands taken. By a fair preponderance of the evidence is not necessarily meant the greater in number of witnesses, but the greater evidence in weight and credibility, and considering all the evidence in the case, the evidence that tends to establish a given fact outweighs the evidence to the contrary. If, after considering all the evidence in the case, you find that the evidence upon any question is evenly balanced, you shall answer such question against the Defendants who have the burden of that issue, for in such a case there would be no preponderance in favor of such proposition.

United States ex rel. T.V.A. vs. Powelson,  
319 U. S. 266 at 273, 274.

Ralph vs. Hazen,  
93 F. 2d, 68 at 70.

State vs. Sawyer,  
Cir. Ct. Marion Co., Indiana, No. 40958.

Given: ✓

Refused:

Given as Modified:

## Plaintiff's Requested Instruction No. 9

You are instructed that the burden of proving the highest and best use of the property contended by the defendant landowners, as well as the burden of proving the fair market value of Tract No. H-801, rests with the defendant land owners whose property is taken and not upon the Government. Severance damage defined earlier in these instructions must also be proven by a preponderance of the evidence by the defendant landowners.

United States vs. 70.39 Acres of Land,  
164 F. Supp. 451 at 476 (U.S.D.C. S.D.  
Cal., 1958).

Given: ✓

Refused:

Given as Modified:

## Plaintiff's Requested Instruction No. 10

A number of witnesses have testified as to their opinions of the value of the properties under consideration. In connection with the opinion evidence in general that has been produced in this case, the Court instructs you that opinion evidence is not a statement of fact, but is a mere statement of the witness' opinion. It is your duty to determine whether such opinions are correct or erroneous, and in arriving at your conclusion you should consider the grounds upon which the witnesses based their opinions, their experience and knowledge of the matters about which they testified, the evidence in the case, and reasonableness or unreasonableness of

their opinions as viewed in the light of their knowledge and experience, using in this connection your own common sense, knowledge, and experience.

You are the sole judges of the credibility of the witness and of the weight that should be given to their testimony, including the testimony of the opinion witnesses. With that the Court has nothing to do. It is the province of the Court to declare to you the law applicable to any phase of the testimony, and it is your duty to apply that law to the testimony and to return a verdict, in connection with the tract of land, in accordance with both the law and the evidence.

You are to judge the evidence of each witness by the reasonableness or unreasonableness of his testimony; the means of knowing that about which he testifies; the manner and deportment of the witness while testifying; his interest, if any he has; his bias or prejudice, if any he manifests; and give all the testimony the weight it should have in reaching a conclusion as to what is the truth of the case.

In passing upon the testimony in the case you are to exercise your common sense, your reason and your judgment in the light of your experience in life, and your observation of the conduct of people, and ascertain from the whole testimony what the truth is, and base your verdict upon that.

10 F.R.D. 293, 319.

Given: ✓

Refused:

Given as Modified:

## Plaintiff's Requested Instruction No. 11

With regard to the view that you took of Tract H-801, Friday afternoon, you are directed to remove from your consideration of Market Value the fact that the Government is presently making use of the condemned tract of land. You are to value the farm in the condition that it was in on March 11, 1957. The testimony of the Government's and Defendants' witnesses will be helpful to you in recreating the condition of said tract at that time.

You are further instructed that the Defendants are not entitled to compensation for loss of any future gain they might have hoped to realize from the tract over and above its fair market value. This is true also with respect to the Government. You are not to consider any personal loss or gain to either party. Market value of the property on the date of taking is the only problem under consideration.

Seaboard Air Line Co. vs. United States,  
275 F. 77 (E.D. S.C., 1921) affirmed 261  
U. S. 299 (1923).

Given:

Refused:

Given as Modified: ✓

[Endorsed]: Filed November 25, 1958.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find that the fair market value of the Baker and Roach land, Tract No. H-801, as of March 11, 1957, is \$165,500.00.

/s/ CHARLES A. BECKER,  
Foreman.

[Endorsed]: Filed November 25, 1958.

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[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

(Rule 59, Federal Rules of Civil Procedure, 28 U.S.C.)

Plaintiff in the above-entitled action moves the Court for an order setting aside the verdict entered in this action on November 25, 1958, as just compensation for the taking by the Plaintiff of Tract No. H-801, and granting a new trial upon the following grounds:

1. The Court erred in refusing to grant Plaintiff's requested instruction 7 and the first paragraph of Plaintiff's requested instruction 11.
2. The verdict of the jury was contrary to law.

3. The verdict of the jury on the issue of just compensation is excessive and directly results from the testimony by Defendants' expert witnesses whose methods and procedures are contrary to federal condemnation law.

4. The verdict of the jury was excessive for the reason that the instructions given the jury failed completely to advise them of the nature, weight and character of comparable sales.

5. The verdict of the jury was excessive for the reason that the Court failed to instruct the jury in other legally acceptable methods of appraisal if they found as a fact that there were no comparable sales.

6. The verdict is contrary to the evidence.

7. The Court erred in denying Plaintiff's Motion to direct a verdict in its favor at the close of all evidence.

This Motion is based upon the Memorandum attached hereto.

JACK D. H. HAYS,  
United States Attorney;

/s/ WILLIAM E. EUBANK,  
Assistant U. S. Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 5, 1958.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY,  
DECEMBER 15, 1958

Honorable Dave W. Ling, United States District  
Judge, Presiding.

Plaintiff's Motion for New Trial is called for  
hearing this day. Wm. Eubank, Esq., Assistant  
United States Attorney, appears for the Government.  
Paul La Prade, Esq., appears for the defendants  
Arthur E. and Doris M. Baker and John L. and  
Bettie Jo Roach. Said Motion is argued by respec-  
tive counsel.

It Is Ordered that said Motion for New Trial is  
denied.

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In the United States District Court  
for the District of Arizona  
No. Civ. 2597—Phx.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

217.99 ACRES OF LAND, More or Less, Situate in  
the County of Maricopa, State of Arizona;  
ARTHUR E. BAKER, et al., and UNKNOWN  
OWNERS,  
Defendants.

FINAL JUDGMENT  
(Tract No. H-801)

This matter coming on regularly for trial before  
this Court sitting with a jury on November 19,

1958, to determine the just compensation due the former owners of Tract No. H-801, for the taking of the fee simple estate in said tract of land, described hereinafter, and the United States of America appearing by William E. Eubank, Assistant United States Attorney, District of Arizona, and the Defendants Arthur E. Baker, Doris M. Baker, husband and wife, and John L. Roach and Bettie Jo Roach, husband and wife, appearing personally and by Louis B. Whitney and Paul W. La Prade, and no other persons appearing; and at the trial evidence, both oral and written, having been introduced on behalf of both parties for consideration by the Court and jury; and the jury after having been instructed in the applicable law by the Court; and after having given due consideration to the evidence returned a written verdict into open Court setting the just compensation due Defendants for all interests taken and destroyed by this condemnation action; and the Court having been fully advised in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed as follows:

1. The Plaintiff has the right to condemn the real property described in paragraph 2, herein, for the public use stated in the Declaration of Taking filed herein on March 11, 1957.

2. The fee simple absolute estate in Tract No. H-801, hereafter described, subject, however, to existing easements for public roads and highways,

public utilities, railroads and pipelines, is vested in the United States of America as of March 11, 1957, to wit:

Two parcels of land in the County of Maricopa, State of Arizona, described as follows:

Parcel 1: The Southeast  $\frac{1}{4}$  of Section 3, Township 2 North, Range 1 West, Gila and Salt River Meridian, Except the East 442.00 feet thereof.

Parcel 2: The North 100 feet of the East 442.00 feet of said Southeast  $\frac{1}{4}$  of Section 3.

Containing 132.40 acres, more or less, including 1.72 acres, more or less, in roads.

3. Arthur E. and Doris M. Baker, husband and wife, and John L. and Bettie Jo Roach, husband and wife, are the former owners of Tract No. H-801, taken by this condemnation, and as such are entitled to the just compensation awarded for the taking of the land by the Plaintiff in the sum hereafter set out.

4. The just compensation due the former owners, set out in paragraph 3, heretofore, from the Plaintiff for the taking of the land, described in paragraph 2, heretofore, is One Hundred Sixty-five Thousand Five Hundred and no/100 (\$165,500.00) Dollars; toward payment of this compensation the Plaintiff has heretofore deposited Eighty-seven Thousand and no/100 (\$87,000.00) Dollars in the Registry of this Court as estimated just compensa-

tion for the taking of Tract No. H-801 with the filing of the Declaration of Taking, of which sum Defendants have withdrawn Seventy-eight Thousand Three Hundred and no/100 (\$78,300.00) Dollars from the Registry of the Court on April 30, 1957; consequently, Plaintiff must deposit in the Registry a deficiency sum in the amount of Seventy-eight Thousand Five Hundred and no/100 (\$78,500.00) Dollars for the Defendants.

5. In addition to the just compensation awarded Defendants in paragraph numbered 4, heretofore, the Plaintiff shall pay the Defendants interest at the rate of six (6) per cent per annum on the principal deficiency sum of Seventy-eight Thousand Five Hundred and no/100 (\$78,500.00) from March 11, 1957, until the date that such deficiency sum is deposited into the Registry of this Court, at which time interests shall cease entirely.

6. The Clerk of Court is directed to pay out of the Registry of this Court the amounts adjudged herein as just compensation and interest as specifically set forth in paragraphs numbered 4 and 5, heretofore, when such sums have been deposited therein to the account of Tract No. H-801, by making his Registry check payable to Arthur E. and Doris M. Baker, and John L. and Bettie Jo Roach, and delivering said check by placing it in the United States Mails addressed to Messrs, Whitney & LaPrade, Attention: Paul W. LaPrade, Attorneys at Law, 810 Luhrs Tower, Phoenix, Arizona.

7. No other person, real or artificial, is entitled to just compensation for the taking, by the Plaintiff, of the real property described hertofore as Tract No. H-801.

8. There are no legal interests in land, other than those heretofore enumerated, requiring payment by the Plaintiff of just compensation for the taking of the fee simple absolute estate in the land condemned, and the just compensation awarded in paragraph numbered 4, heretofore, is the just compensation for all property rights taken or destroyed by this taking.

Dated this 2nd day of January, 1959.

/s/ DAVID W. LING,

Judge, United States District Court for the District  
of Arizona.

Prepared by: William E. Eubank, Assistant  
United States Attorney. Reserving, however, all  
questions of law and fact in the event of an appeal.

Approved as to Form:

WHITNEY & LaPRADE,

By /s/ PAUL W. LaPRADE,

Attorneys for the Defendants,  
Baker and Roach.

[Endorsed]: Filed and entered January 2, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, Plaintiff in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that part of the Judgment entered by this Court on January 2, 1959, relating to the determination of just compensation for Tract No. H-801.

Dated this 6th day of February, 1959.

JACK D. H. HAYS,  
United States Attorney;

/s/ WILLIAM E. EUBANK,  
Assistant U. S. Attorney.

Affidavit of Mail attached.

[Endorsed]: Filed February 10, 1959.

In the United States District Court  
for the District of Arizona

No. Civ-2597—Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

217.99 ACRES OF LAND, et al.,

Defendants.

Before: Honorable Dave W. Ling, Judge, and a  
Jury.

TRANSCRIPT OF PROCEEDINGS

November 19, 1958—11:00 o'Clock A.M.

Appearances:

MR. JACK D. H. HAYS,

U. S. District Attorney, by

MR. WILLIAM E. EUBANK,

Asst. United States Attorney,

Appeared for the Government.

WHITNEY & LaPRADE, by

MR. LOUIS B. WHITNEY, and

MR. PAUL W. LaPRADE,

Appeared for Defendants Arthur E. Baker  
and Doris M. Baker; and John L. Roach  
and Bettie Jo Roach.

R. R. McGREW

called as a witness in behalf of the Defendants,  
having been first duly sworn, testified as follows:

Direct Examination

By Mr. LaPrade:

\* \* \*

Q. What is your occupation?

A. I am a Land Planning and Zoning [7\*] Consultant.

\* \* \*

A. I was with the City of Phoenix Planning Department from 1945 until 1953, as a planning technician.

And I was with the Maricopa County Planning and Zoning Commission from 1953 until September, 1958, as Planning Director.

Prior to that, I was with the Allegheny County Planning Department for five years, at Pittsburgh, Pennsylvania.

Q. In your experience in the field of land planning, have you in all and each of the occupations to which you have testified, have you had occasion to be called upon to make studies or determinations as to the highest and best use to which any given tracts of land may be devoted?

A. Yes, sir.

Q. Generally speaking, what are the principal factors which you must consider in arriving at the

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of R. R. McGrew.)

valuation and determination of the highest and best use for land in general?

A. First off, you have to consider the conditions in the immediate vicinity or neighborhood of the land; and, secondly, the trends of growth that are taking place, or appear to be taking place for the future development of the whole area.

Then you have to consider how your parcel of land fits into that future development, and the existing conditions in the area. [8]

Q. Does the physical characteristic of the land itself play any part at all? That is, the topography, I am speaking of.

A. It does in determining how the future use of that land should be developed, yes. I would say yes to your question.

Q. In your present occupation as a land planner, do you have in Phoenix, Arizona, occasion to be called upon to make determinations as to the best and most expedient method of devoting given lands?

A. Yes, sir.

Q. For how long have you been engaged in that particular line of work?

A. Since September of 1957.

Q. That is while you are self-employed, you mean?

A. Yes.

Q. When you were serving as Director of the Planning Department of the Maricopa County Zoning Commission, did you have occasion to acquaint yourself with the general residential development in this valley?

A. Yes, sir.

(Testimony of R. R. McGrew.)

Q. Do you know in which direction the general population movement is going?

A. I believe so.

Q. And what direction is that, sir? [9]

A. Actually, it is going in all directions. It also is tending to follow your major highways and arterials, but, generally speaking, the population in this valley is going principally north, east, and west. But it is also going south to a fairly good extent.

Q. In this action, Mr. McGrew, we are concerned with what I will refer to as the Roach-Baker property, or otherwise known in the case as Tract H-801.

Are you familiar with that land owned by the defendants? A. Yes.

Q. Have you been on that land?

A. I have.

Q. Have you been in the general vicinity?

A. I have.

Q. Have you familiarized yourself with the surrounding circumstances, and which may be a factor in determining the highest and best use of that land now, or in March of 1957? A. Yes, sir.

Q. Were you acquainted with the general conditions in that particular area at or about March 11, 1957? A. Yes, sir.

Q. Was that by virtue of your experience as Planning Director for Maricopa County?

A. Principally, yes. [10]

\* \* \*

Q. (By Mr. LaPrade): Mr. McGrew, I refer you to Defendants' Exhibit A for identification, and

(Testimony of R. R. McGrew.)

ask you to examine the document, and without reference to any particular item on it, generally speaking, explain to the jury what this document represents.

A. This document is in two parts. No. 1 in the upper right-hand corner is a vicinity map showing the property, with respect to the area, and the general portion of the rest of the map is showing the Baker-Roach property, and the road system in the general area, and property system.

Q. I notice you have filled in certain portions in green pencil.

Can you tell the jury what that represents, in principle?

A. That represents the Baker-Roach properties at approximately March 11, 1953.

Q. That would be the land which the Government has condemned, and in addition thereto, the balance of the land? [11]

\* \* \*

Q. I notice that you have embossed over a portion of the green with, on an angle, brown marks. Can you explain generally what that represents?

A. That generally represents the portion of the Baker-Roach property under condemnation, and an additional housing project to the west of it, all part of the same project.

Q. I note in the lower left-hand corner on what you have designated as Litchfield Road, which also refers, by way of reference, would be the——

Mr. Eubank: I object to this, your Honor, I

(Testimony of R. R. McGrew.)

know what counsel is going to say, and it is definitely inadmissible. And if he will offer the thing, I will make my objection to the map.

The Court: I don't know what he is going to say. [12]

\* \* \*

Q. (By Mr. LaPrade): Mr. McGrew, have you made an appraisal of Tract H-801, as of March 11, 1957, with respect to the factors and influences in that immediate vicinity which may or may not affect the use to which the land could have been devoted, or the market demand for any given use which existed?

A. Could I have that question repeated, [13] please?

\* \* \*

A. (By the witness): Yes.

Q. (By Mr. LaPrade): What were the factors which you have considered in arriving at your opinion?

A. Well, the factor in the immediate vicinity that had the greatest influence on my conclusion is the Luke Air Force Base itself, with the large number of personnel who are employed there, live there, or, rather, are employed there and commute back and forth to the base.

Of course, other factors are the uses that have already moved into the area, or are in the process of developing into the area, such as a trailer court

(Testimony of R. R. McGrew.)

on Glendale Avenue, a subdivision to the south that has been started and partially developed.

Q. Where is that, sir?

A. That is immediately adjacent to the southeast corner of the airport.

Q. With reference to Defendants' Exhibit A for identification, can you orally designate where in this instrument that subdivision appears?

A. Yes. It is on the east side of Litchfield Road at the immediate south end, bottom of the map.

Q. It would be here?

A. South end of Glendale. [14]

\* \* \*

Q. There have been a lot of statements about future development.

Isn't it the function of the land planner to take the over-all look of developments over the years?

A. That should be one of the big factors, yes, sir.

Q. In other words, you are mainly, your main function is to determine trends that are going to raise problems in the years to come in the area, isn't that true?

A. That should have quite an influence on a determination.

Q. And then on that basis you are able to recommend to the Zoning Commission that they must take certain steps in zoning certain areas of the county, isn't that correct?

A. Well, you take other factors into account on your determinations, too.

Q. In this particular plat that you drew, does

(Testimony of R. R. McGrew.)

this item here entitled "Noise Clearance Zone" have anything to do with the land use study that you made of this area?

A. This map is not a land use map.

Q. This is the one you identified as one that you drew, is that correct?      A. Yes, sir.

Q. All right. Does this Noise Clearance Zone have anything to do with your opinion on the use of this land as of March 11, 1957? [17]

\* \* \*

Q. This Noise Clearance Zone, if you notice, you have that outside of the Baker-Roach property, is that correct?      A. Yes, sir.

Q. What is its relationship to this taking here, Tract H-801?

A. I assume—do you mean what was the Air Force thinking when they condemned—

Q. No, all we worry about here today is Tract H-801, this property here. What do we care about this stuff over here?

A. In my opinion, the fact that the Noise Clearance Zone is west of the Baker-Roach property would indicate it makes it that much more desirable for subdivision, because it is outside of the noise area, where the army determined [19] the noise factor would end with their take-offs and landings, and circling.

Q. So by the fact that it is outside of the noise clearance area, that helps you in deciding the use of the land?

A. That would make it more desirable for resi-

(Testimony of R. R. McGrew.)

dential, more so than if it were west of the line on that map. [20]

\* \* \*

Q. Mr. McGrew, do you know whether, from your studies of the situation, there is any available water supply on the Roach-Baker land?

A. I understand there are wells to the north, and an [21] irrigation system that they serve.

Q. That they serve for agricultural purposes. Would that have an effect on whether this, or any given land, the availability of water, that is, would that be a factor as to whether this land, or any land was suitable for residential purposes?

A. It certainly would.

Q. Did you consider that in examining this property?

A. I did to this extent, that you simply can't develop property for residential without water, and it makes it a lot cheaper for a subdivider to develop his property if he already has the water there.

However, if the water were not there, it would be possible to bring it in from elsewhere, and still develop the property for residential.

Q. Does this property on the southern line of it, as indicated on the map, front on Glendale Avenue?      A. Yes.

Q. Point out to the jury the Roach-Baker property as it was March 11, 1957, their holdings.

A. The Roach-Baker property is shown in the yellowish color on this map, and it goes south on Glendale Avenue, and goes north of North Avenue,

(Testimony of R. R. McGrew.)

and is on both sides of Dysart Road, and is outlined by the heavy black border. [22]

\* \* \*

Q. What is this white triangular place?

A. That is a parcel of land sold from the Baker-Roach property, and is being developed for school purposes.

Q. Dysart School?           A. Yes.

Q. What function does Glendale Avenue serve in this vicinity?

A. Glendale Avenue feeds the bulk of the traffic from Phoenix and Glendale area to Luke Field.

Q. Is Dysart Road on the section line? [23]

A. Yes.

\* \* \*

Q. As of March 11, 1957, do you know whether there was any contemplated action in connection with any widening of Glendale Avenue in that area?

A. There was.

Q. By whom?           A. By Maricopa County.

Q. What was that contemplated action?

A. They were proposing Glendale Avenue with a 130-foot right-of-way.

Q. As of March 11, 1957, were there any commercial activities in that general area?

A. Yes, there was a commercial activity at Glendale Avenue and Litchfield Road.

Q. What was that?

A. A tavern and bar.

(Testimony of R. R. McGrew.)

Q. On which corner? A. The gas station.

Q. How far is that? [24]

A. It is within half a mile of it.

Q. Do you know whether as of March 11, 1957, there had been any specific action taken with respect to zoning of any of the Roach-Baker land by the Maricopa County Board of Supervisors?

A. Yes, sir.

Q. What was that, sir?

A. There was commercial zoning established on both the southwest and the northwest corners of the intersection of Dysart Road and Glendale Avenue.

Q. On this exhibit, point out for the jury's benefit precisely where that was.

A. That is two corners right here.

Q. The northwest corner of Northern and Dysart, and the southwest corner of Glendale and Dysart?

A. Yes.

Q. Had in fact that been resold?

A. Yes.

Q. For what purpose?

A. For commercial uses.

Q. Was there any zoning with respect to the balance of the lands?

A. I believe not.

Q. If not, what would be its general classifications?

A. What would be termed unclassified, which permits [25] residential uses.

Q. With reference to your general knowledge and your experience in all of the matters you have

(Testimony of R. R. McGrew.)

testified to here today, have you formed an opinion as to the highest and most profitable use to which Tract H-801 owned by the defendants Roach and Baker could have been devoted or used for as of the date March 11, 1957?           A. Yes, sir.

Q. And what is that opinion?

Mr. Eubank: I object to that, your Honor. The objection is on the basis of relevancy, that the testimony of this witness has not determined a market as understood in Federal Condemnation Law, and the market value is certainly not determined by zoning practices of the Maricopa County Zoning Board.

I think it is highly prejudicial, and will definitely confuse the jury if this man is allowed to testify on the basis of the so-called study, or the background material that is set out here as the basis for his decision.

The Court: I will let him testify. I can take care of that by an instruction very easily.

Q. (By Mr. LaPrade): What is your opinion, Mr. McGrew?

A. My opinion is that the best use for that property would be a combination of residential and commercial uses.

Q. Where would the commercial be? [26]

A. The commercial would be at least at the corner of Dysart Road, both corners, or all three corners of the Baker-Roach property, and possibly extending toward the Luke Field Base, over part of the property.

(Testimony of R. R. McGrew.)

Q. And the residential would be the remaining land on Tract H-801? A. That is correct.

Q. Which would be on the north side of Glendale Avenue? A. Yes, sir. [27]

\* \* \*

LOUIS J. COMBS

called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. LaPrade:

Q. State your name, sir.

A. Captain Louis J. Combs.

Q. You are a captain in the United States Air Force? A. That is right.

Q. Where are you stationed?

A. At Luke Air Force Base.

Q. What capacity are you serving in the Air Force at the present time?

A. I am the Information Services Officer.

Q. How long have you been stationed at Luke Air Force Base? A. Since February, 1957.

Q. Are you acquainted, Captain, with the general location of the land involved in this lawsuit?

A. I am. [29]

\* \* \*

Q. Have you made it your business to investigate and inquire into the total personnel stationed

(Testimony of Louis J. Combs.)

at Luke Air Force Base approximately as of the month of March of 1957?      A. I have.

Q. What is that total population?

\* \* \*

A. (By the Witness): As of the 31st of March, 1957, [30] the total strength of the Base, officer, airmen, and civilian was 4,574 people.

Q. (By Mr. LaPrade): Do you have the figures as to how many of those 4,574 persons were not living on the air base?

A. Yes, I have. They were not living on the air base, there were 276 officers, 494 airmen living off base, and the total civilian figure, 1,369.

Q. Those would be civilian personnel employed by the Air Force and working on the Base?

A. That is correct.

Q. Do you know of the off-base personnel, by that I mean those not living on the base, how many of those were married, either in numbers or percentages, sir?

A. Would you repeat your question? The number that were not married, or were married, off-base?

Q. Were married, sir.

A. In the case of the airmen, the total number that were off-base, 494 would be married, living off-base; in the case of the officers would be approximately 250 who are married living off-base.

Q. I missed one point, Captain. On the airmen you said 494 living off-base?      A. Right.

(Testimony of Louis J. Combs.)

Q. Were those all married?

A. Right. They would all be married. The unmarried [31] airmen would stay on the base.

\* \* \*

Q. To sum it up, then, I assume it is your testimony that approximately 2,000 persons were either stationed or working at the Base, but living off the base?

A. That is correct. It would be 2,139 people, according to my figures.

Q. Of your definite knowledge, approximately 700 were married? A. Yes, sir.

Q. Do you know whether Luke Air Force Base, what its status is with respect to the Air Force Program in general?

A. Luke Air Force Base became a permanent Air Force Installation on the 7th day of April, 1956. [32]

\* \* \*

Q. On March 11, 1957, were there any facilities available, to your knowledge, on or about Luke Air Force Base, which could have been or were devoted for the purpose of housing military or civilian personnel? [33]

A. As of that date on the base we had space for 52 officers and their families, and 65 airmen and their families.

So far as other facilities, they would be private rentals in Litchfield and Goodyear, and in Glendale.

(Testimony of Louis J. Combs.)

Q. Do you know that the married personnel living off of the base in fact were living as far away as Glendale? A. Yes, sir, they were.

Q. Do you know whether any of them were living as far away as in Phoenix?

A. I can't say definitely. I can presume so, because we still have people living as far away as Phoenix.

Q. And they must commute every day to the Base? A. That is correct.

Q. Would that be true with respect to civilian personnel? A. Correct.

Q. Captain, do you know whether on March 11, 1957, there was a need or a demand for housing of base personnel at Luke Air Force Base?

A. There was. [34]

\* \* \*

### Redirect Examination

By Mr. LaPrade:

\* \* \*

Q. Do you know how many units are being constructed on this land?

A. I understand that there are going to be a total of some 700 when they are completed.

Q. And when they are completed and occupied by base personnel, do you know whether that will accommodate the immediate demand for housing?

A. I am not in a position to answer that question. I presume it will to some extent. Whether it will resolve the problem finally, I don't know.

(Testimony of Louis J. Combs.)

Q. That will certainly alleviate the problem, will it not?      A. It will. [37]

\* \* \*

J. LESLIE HANSEN,  
called as a witness in behalf of the Government,  
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

\* \* \*

Q. And you are a realtor-appraiser, and you reside here in Phoenix, Arizona?

A. Yes. [39]

\* \* \*

I then took into consideration the sales of the other property that occurred; one here at the corner of Glendale Avenue and Litchfield Road——

\* \* \*

The Witness: This sale occurred in 1953, [55] sir.

\* \* \*

Mr. LaPrade: In particular, I might add to my objection not only that it is prejudicial, it is remote in point of time, and that from the prior evidence in this case, it was long before Luke Air Force Base became a permanent facility.

The Court: That may be a little remote. I will sustain the objection.

(Testimony of J. Leslie Hansen.)

A. (By the Witness): I took into consideration all the sales that occurred in the area anywhere around in that part of the country that I could find, in the area that I considered to be associated with the date, limited by the fact that some did not occur, therefore I had to take this one that we are discussing now.

But I found sales in here west of Luke Field in the Adaman Irrigation District, oh, some 15 sales or more, I guess.

I found some sales in the area east of the subject property, and I took and looked at them all, and took into consideration what they were, the types of farm, [56] and the type of operation, the water conditions so far as the subject sales of the comparable sales is concerned, and the subject property, and considered the highest and best use of the subject property, as to whether or not it was straight farm, whether there was speculative value, whether there was demand for this, or for that, and as a result of that study formed my opinion of the value of the farm before the taking.

Q. Now, as to the highest and best use as you just defined, what is the highest and best use?

A. In my opinion, the highest and best use of the Baker farm is as a farm with a speculative value increase, because of the speculative activity along Glendale Avenue.

Q. (By Mr. Eubank): There has been testimony this morning relating to the residential possibility, or that the Baker-Roach farm has right on

(Testimony of J. Leslie Hansen.)

—well, at March 11, 1957, the date of taking, that it has residential possibilities. Do you concur with that?

A. No, I do not, and I have a reason for it.

Q. Why do you not?

A. I have a reason for it.

Q. All right.

A. May I state it on this map?

Q. Yes.

A. A subdivision is located not quite, or about [57] a quarter of a mile south of Glendale Avenue on the east side of Litchfield Road.

It is a 244 lot subdivision that extends in area up to this line, and down to this line and here, and as of March 11, 1957, there had been less than 26 lots sold, and only five houses built.

Q. When was that subdivision opened?

A. That subdivision was filed in 1953.

Q. Does that aerial photograph there show the extent of that subdivision?

A. It shows an outline of the lot, and there is no development east of the wash in this subdivision. Thus far, all activities have been here.

Mr. LaPrade: Pardon me. Could we have him pencil it in some way?

Q. (By Mr. Eubank): Yes, would you take that red pencil and just circle that?

A. Circle the whole subdivision?

Q. Yes, the houses right there, just put a circle around it so they can find it.

(Testimony of J. Leslie Hansen.)

A. You want to show the outline of the whole subdivision, the land involved in the subdivision?

Q. Yes.

A. (Indicating): This part is the only part that is developed. And I took that into [58] consideration.

Q. Did you actually see that subdivision?

A. Yes.

Q. Were there any improvements on it whatsoever?

A. Yes, there are five, or I don't remember whether it is five or six houses that have been built.

Q. What type of houses are they?

A. Rather modest type single-family residences.

Q. Are there any roads?

A. Yes, there are roads in this part of the subdivision.

Q. Are there any improved roads?

A. No, just surfaced, gravel surfaced roads.

Q. Now, in your quest of this highest and best use, did you talk to the developer of that subdivision?

A. Yes, I did.

Q. What did he tell you about it?

Mr. LaPrade: I object to anything the developer told him.

Mr. Eubank: This is an expert witness, your Honor, on appraisal. The hearsay is a necessary part of their determining the value, the market value.

The Court: I think so. No question about it.

The Witness: The subdivider told me about the

(Testimony of J. Leslie Hansen.)

history of the subject land before he bought it, how long it had been offered, and how much money he paid down, and the price he paid for it. [59]

Q. (By Mr. Eubank): What did he pay for the land itself?

Mr. LaPrade: I object to it, your Honor, unless we know when it was.

The Court: Do you know when it was?

The Witness: I did, yes, sir.

He bought it in August of 1953. I have the docket in two deeds.

Mr. LaPrade: I object to that on any basis for admission in this case. Too remote in point of time.

The Court: Objection overruled.

The Witness: He bought the north 480 feet of the south 780 feet of the north half of the southwest quarter of Section 10, Township Two North, Range One West, on August 20, 1953, from Frihoff N. Allen, that is F-r-i-h-o-f-f, under Warranty Deed recorded in Docket No. 1396, page 87, with Internal Revenue Stamps affixed to the Deed in the amount of \$6.60.

Mr. LaPrade: Your Honor, before he goes any further, may I have a clarification of your ruling on my objection?

The Court: This has to do with the subdivision. This deals with this subdivision. I will hear what he has to say about it.

The Witness: The second part of the [60] parcel sold at the same time, and was the north half of the southwest quarter of Section 10, except the south 780 feet, sold by the same seller on August

(Testimony of J. Leslie Hansen.)

20, 1953, under Warranty Deed recorded in Docket 1396, page 88, with IRS in the amount of—that is, Internal Revenue Stamps, in the amount of \$6.60 affixed to the deed.

Mr. Joseph Weber is the purchaser, and the subdivision developer and operator as of March 11, 1957, and he told me the price that had been asked, and the down payment required, and that date I have here if I am permitted to tell it.

The Court: Go ahead.

The Witness: It sold for no down payment, \$200 for closing cost, at \$12,000, which is \$198.44 per acre.

Q. (By Mr. Eubank): Now, in the developing, did you talk to him about the development and sale of his subdivision lots?

A. Yes, I did, and got a record of each lot sale that has been made.

Q. What did he tell you about the development of those, of the subdivision?

A. Well, he said that he had sold a certain number of lots, and that there were five or six lots that were sold, and there wasn't too much that he could say, because the [61] record is all here, and I had the information.

\* \* \*

Q. Now, did you use the experience of this residential subdivision in arriving at your highest and best use?

A. Yes, sir, one of the factors that I considered, and I think it is very pertinent.

(Testimony of J. Leslie Hansen.)

Q. And what was your opinion in regard to that subdivision?

A. The history at Luke Field is involved in this process. Luke Field was activated during World War II, [62] became deactivated, then again became activated. [63]

\* \* \*

Q. Tell the jury the—first, are there any other comparable sales that you want to enlighten us on right now before we go into the actual price?

A. You mean as to the quotation?

Q. Yes.

A. In the interest of brevity, I can say that I considered, of the comparisons that we found, which were many, I considered some seven or eight, including the one that I am not allowed to testify on, and including the Luke Field homes subdivision, and considered the sale price on those lots.

I considered the sale of the tracts of land involved in the Goodyear Development that I did, and being acquainted with the history of them back in 1954, because of having made previous appraisals in that area, and knowing what the prices, the sale prices were in 1953 and 1954, and then finding what they were in 1955 and 1956, and in one or two instances in 1957, I believe I found that in my opinion the average value of those farms in that area—

Mr. LaPrade: Wait just a moment.

The Witness: I am not going to give you the amount.—Was a certain dollar amount.

I applied the same criteria as to the desirability

(Testimony of J. Leslie Hansen.)

of the property with its water, as compared with the Adaman [65] Water Irrigation District, and arrived at an opinion of value of the farm as a farm, of the subject Baker-Roach farm, as of March 11, 1957.

Q. (By Mr. Eubank): In other words, by going into these other sales, comparable or similar sales, you were able to arrive at this market value figure on the Roach property?

A. Yes, sir, my opinion of the market.

Q. That is correct? A. Yes, sir.

Q. Of all those sales, are there any specific ones that you feel are very pertinent to our consideration, more so than all the others that you looked into?

A. I would say that the pattern of the whole sets a pretty good trend, so that with the figures involved, the opinion of value sets itself forward rather clearly. [66]

\* \* \*

The Witness: Yes. That figure is approximately \$600 an acre for the farms in the Adaman Irrigation District, with practically an unlimited amount of water, an area that has been sought after by, and invaded by the vegetable growers who have pushed up the price since the 1953-1954 period.

Q. (By Mr. Eubank): Now, do you consider that the lands within the Adaman Water District are inferior or superior to the subject property?

A. In my opinion, they are superior because of their water use, their water situation.

(Testimony of J. Leslie Hansen.)

Q. Does the Baker-Roach farm, to your knowledge, have an unlimited supply of water?

A. No, the Baker-Roach farm, as I understand it, has a limited supply of water.

Q. Do they have enough water to engage in a full potential of agricultural activity, according to the general experience in this valley?

A. Baker-Roach has made very fine use of the water supplies that they have, and the ditch arrangement, cement [67] ditches, and have shown good management.

But I believe that they, in that 80-acre piece, it is practically taken care of by tail water, or sump water that is recirculated.

But I believe they lacked water, sufficient water to properly double-crop the farm in the sense that is typical in the Salt River Valley, with adequate water. [68]

\* \* \*

The Witness: In my opinion, the fair market value of the Roach farm before the taking was approximately \$314,700. That is based on a combination of price for the road frontage property, and a combination of price for the stuff farther back. [69]

\* \* \*

Q. And the value of the remainder after taking, again, please.

A. \$222,080.

Q. Now, if you subtract the value of the entire farm before the taking from the value of the re-

(Testimony of J. Leslie Hansen.)

mainder after the taking, what figure do you have left?      A. \$92,680. [70]

\* \* \*

Q. Does the fact that there is C-1 zoning in those two small pieces of land there affect the market value in relation to the rest of it?

A. It is part of my opinion of the market value of the whole, as ascribable to this southern portion of the whole farm.

Q. And you took that into consideration?

A. I did.

Q. And that is why you gave a greater increment of value along the Glendale Avenue?

A. Yes, sir. [72]

\* \* \*

### Cross-Examination

By Mr. LaPrade:

\* \* \*

Q. Among them you mentioned the southeast corner of Litchfield Road and Glendale Avenue purchased by one Rubenstein in 1953?

A. Yes, sir.

Q. Did the per acre sale price have any effect on your opinion of this market value, and the use?

A. Yes, it did.

Q. And did the sale price of the lots in the subdivisions farther south on Litchfield Road have any bearing upon your opinion of the market value?

(Testimony of J. Leslie Hansen.)

A. They sure did, yes, sir.

Q. And that was subdivided and purchased back in 1953, [76] wasn't it? A. That is right.

Q. Do you know as a fact that there is a large drainage channel running right through the middle of that subdivided property?

A. Not through the middle, through the west part.

Q. Anyway, it is on both sides?

A. Yes, sir.

Q. And they would have to bridge over it in some fashion? A. That is correct.

Q. And as a matter of fact, you know that that subdivision was a proposition where you bought your lot and cleared it, and provided your own financing?

A. They attempted to sell lots, and they have, and I haven't testified as to the amount, but I have the amount of the sale price. I am familiar with it.

Q. That was a general proposition, wasn't it?

A. Yes, sir.

Q. It was not a situation where a landowner developed his land, built model houses on it, and you walked in and bought the house?

A. You mean FHA?

Q. What we generally consider a housing project.

A. At that time it wouldn't qualify for [77] FHA.

\* \* \*

(Testimony of J. Leslie Hansen.)

Q. Mr. Hansen, as an appraiser, wouldn't you be willing to admit to the jury that it would be a very pertinent factor to any willing buyer or investor to determine first whether this government facility adjacent to the Baker land was going to be a permanent or a temporary thing?

A. I think so. I agree with you.

Q. As a matter of fact, back in 1953, 1954, and 1955, it is very doubtful if anybody would have invested any great sum of money on this, or any other land in that immediate vicinity, for housing purposes, unless he knew that there was going to be an air base there?

A. Mr. Rubenstein bought in 1953 for that possibility.

Q. He bought it pretty cheap, didn't he? [78]

A. I know how much he paid for it.

Q. I will ask you if it is not a fact that when a prospective purchaser examines a given piece of land, and he discovers that it is already zoned for a commercial corner, that might have a considerable amount of weight with him with respect to the value of the land?

A. Yes, I think so.

Q. And particularly in this case do you not know that in March of 1956, the defendants Roach and Baker had those corners rezoned commercially?

A. Yes, sir, I know that.

Q. And it is your opinion that that has no effect on the market value of this land?

A. I didn't say that it didn't.

(Testimony of J. Leslie Hansen.)

Q. To what extent does it, in your opinion?

A. Now you are shooting questions and contradicting your own questions.

Your third question back was do I think that it has a bearing. And I said yes. Now you say do you not think it has a bearing, so I am having difficulty following you.

Q. I was referring to the highest and best use.

A. Yes, sir.

Q. I am now talking about market value.

A. Yes, sir. [79]

Q. Is it your opinion that the fact that the corner had already been rezoned before this government taking has a definite effect on the then market value of this land? A. Yes, sir.

Q. As a matter of fact, it is quite an accomplishment on any given corner where you have what we call section lines?

A. That is right. I took that into consideration.

Q. But you have testified that the Roach-Baker does not have sufficient water to farm it as it possibly could best be farmed?

A. That is my opinion.

Q. Do you know that, sir, or are you just thinking it?

A. I know it from the report from the log of the Hansen Pump Company for the two wells on the property, and from what I can gather, and that is my opinion based on my study.

Q. And if I told you that the static level of water was closer to the surface of the Roach-Baker land

(Testimony of J. Leslie Hansen.)

than it is out in the Adaman Water District, would you argue with me on that?

A. The static water level may or may not have something to do with it.

It will enter into the cost, but I know what [80] the static water level is on these farms as of the last reading by the Hansen Pump Company. I know what are the gallons per minute with the present horsepower motor on the one pump, and what they recommend for it.

I have those factors, and took them into consideration.

Q. Is it not a fact, or do you know that now, and at all times with which we are concerned, the Roach-Baker farm has produced sufficient water to farm every crop that has been ever put on it?

A. To double-crop it?

Q. I am talking about a full production on that farm.

A. In the sense of double-cropping, such as we use in the Salt River Valley, is that your statement?

Q. How about cotton lands? Isn't this farmed in cotton?

A. It has been farmed in cotton.

Q. Do you know whether it has a cotton allotment?

A. I believe it has a cotton allotment.

Q. And that also would have a considerable effect on the value of it as farming land, would it not?

A. Yes, sir. [81]

\* \* \*

Q. If it was established by competent evidence

(Testimony of J. Leslie Hansen.)

here that there was without any question adequate water to farm this land, would that affect your opinion, sir?

A. Yes, I think it would affect my opinion of the fair market value of the farm as a whole.

Q. All right, sir. To be specific, assuming for the purpose of argument——

A. Yes, sir.

Q. That this farm has and did then have adequate water supply.

A. For full double-cropping, or for full cotton cropping?

Q. For any purpose you want.

A. Yes, sir.

Q. What would its market value before the taking have been, in your opinion?

A. It would have increased it by approximately 100 dollars per acre, in comparison with the other farms sold in the area with adequate water.

Q. We are talking about 132.4 acres, sir.

A. No, we are talking about 513 acres or more, or less, the whole farm.

Q. Are you able to give me a figure as to the increase in the difference between the before and after figure, based on that method? [83]

A. Yes, I think I can.

I can give it to you very quickly on the before, and I may need a little time on the after.

The figure before taking, based on an answer to your question, would be \$366,060. It increases it \$51,300, assuming that there is 513 acres, and as I have said before, there is a little variance.

(Testimony of J. Leslie Hansen.)

One deed I think shows 509.76 on one record, and another shows 513, or 516, I believe the deed showed that, and the G.L.O. measurements would indicate 513.

And that is not too important, because it is very difficult to get to a specific point unless you have an accurate survey.

Your question, Mr. LaPrade, is to find the difference, that was \$92,680, and what would it be now with this——

Q. Yes, sir.

A. All right. The figure would be \$105,920, assuming that there was full and adequate water.

Q. Mr. Hansen, you stated that this, the difference of the before and after method, referring now back to your \$92,680 figure on your original opinion.

A. Yes, sir.

Q. Did you include in that any element of severance damages to the balance of the farm? [84]

A. I did not. I considered it, but there is no severance damage on the basis on which I made my valuation.

Q. What in particular about your means of valuation would have eliminated severance damages?

A. Well, you asked the question, and here it comes.

The farm has the value, in my opinion, with the water as I understand it, of \$500 per acre for the whole farm. But because of the zoning and the speculative value of Glendale Avenue frontage, I

(Testimony of J. Leslie Hansen.)

feel that much of the land has a value of \$700 an acre.

So that by breaking it up into the various parts, 40 acres at \$500, 80 acres in the west half of the southwest quarter at \$700 per acre, in Section 2 those two were; and in Section 3, 160 acres in the southeast quarter at \$700 per acre.

And in Section 3 in the northeast quarter, approximately 155.21 acres at \$500 per acre, being north of the half-way line here; and in Section 10, 59.40, part of the northeast of the northeast at \$700 per acre.

Then in Section 34, the south 500 feet of the southwest of the southeast corner, at \$500 per acre. I came to this \$314,760 valuation, which by your question is if there were sufficient water, would be the higher figure of \$366.060.

Now, under the premise that I used, you [85] cannot have a speculative value at a higher value, and still have severance damage, when you enter the farm into the realm of speculative value as well as farm value.

You are sacrificing farm value, you can't have your cake and eat it, and you are sacrificing farm value.

For instance, if this was right for subdivision work, and they took the whole farm, the whole farm would go by the board, such as has happened with thousands of acres in the Salt River Valley.

When the price of the land reaches the proportions of subdivision land, it no longer has value as farm

(Testimony of J. Leslie Hansen.)

land. You can't just say we are damaged for the rest of it for farming, because we have sold off for a speculative value, and on that basis I don't feel there is any severance damage applying to the remainder of the farm.

Q. Do I take it it is your testimony that when the Government gets through taking this land, the remainder of the land is no longer farm land?

A. No, I didn't say that.

Q. Then that is still farm land, isn't it?

A. Yes.

Q. As a matter of fact, your whole theory is predicated on farm values?

A. Farm and speculative values.

Q. Now, for the purpose of describing to the jury, am [86] I accurate when I say that the farm which is left after the taking is this piece I am designating, that is, the northeast quarter of the—the north half of the east half of Section 3, and the west half of the west half of Section 2, and this approximate 56-acre figure in Section 10?

A. That is correct.

Q. So that we now have instead of one large unified farming operation, we have one tract of land here, and we have, to get down to the southern piece, you have to go half a mile, don't you?

A. You always had to go that way, Mr. [87] LaPrade.

\* \* \*

Q. Let us talk about tail water for a minute.

(Testimony of J. Leslie Hansen.)

I believe it was your testimony that it was your understanding that this piece here that is on the east side of Dysart Road, which you referred to as approximately 80 acres, and for the record may I correct you, and wouldn't that be approximately 120 acres?       A. That may be.

Q. It was your testimony that it was your understanding that it was primarily irrigated from the use of tail water?       A. 80 acres of that is.

Q. Yes, that would be more accurate. By way of explanation for the jury, you are saying that the tail water from the farming of this piece, which is the land that is being taken, plus that quarter section north of it, probably is over into a sump which is indicated on this photograph, and is again pumped up on this 80 acres?

A. That is right.

Q. In other words, they pump the water once, and they use it, and it flows by gravity into a sump, and they pump it out and use it again?

A. Yes.

Q. Is that what you say, sir? [88]

A. Yes. Now, then, I also want to point out that they now have more water for these lands than they had before, because this is being taken out of their water supply and allows more water for these lands, and, strictly speaking, I should have taken that into consideration in arriving at the remaining value, which I did not.

Q. Mr. Hansen, do you know how they get water

(Testimony of J. Leslie Hansen.)

onto this east 80 acres now, or that portion of it which was formerly irrigated by tail water?

A. Under the new arrangement?

Q. Yes.           A. No, I do not.

Q. Have you made an effort to find that out?

A. I understand that the Corps of Engineers is doing something to find out about underground water, but I don't know what it is, as such.

Q. If they no longer have the use of their own tail water on the piece that the Government is taking, then they have that much less tail water going into that sump, isn't that right?

A. That is right.

Q. True. They still have the water underground which they haven't had to pump?           A. Right.

Q. Then, sir, if it took all of the tail water [89] that they formerly had to irrigate the east 80, and now they don't have that much tail water, then they would have to pump more water out of their original pumps, wouldn't they?           A. That is right.

Q. Do you know how much an acre-foot it costs to pump water?

A. It varies with the depth and the type of equipment.

Q. Do you know how much an acre-foot on the average in farming business it costs to irrigate land?

A. I wouldn't like to volunteer a statement on it, because I couldn't answer it accurately.

Q. Don't you think it would have been more reasonable for you to have determined whether they

(Testimony of J. Leslie Hansen.)

were going to have sufficient water to irrigate that east 80, in arriving at your after value?

A. I felt that they had sufficient water, because of the taking out of the 132 acres.

Q. You see what I am talking about?

A. Yes, I do.

Q. They have to pump it twice, in other words, now, once out of the pump down into the sump, and pump it again up to irrigate it.

A. You mean that it is now going to cost them less, is that what you are telling me, less to pump it direct from the well than to pump it here? [90]

\* \* \*

Q. I don't know, perhaps you didn't understand my question. Formerly they pumped water, and it was used on this land, and then by gravity went over to the sump? A. Yes.

Q. And they pumped it again and used it again?

A. That is right, yes.

Q. That was the system. Now, if they don't have half, assuming they have now approximately half as much tail water, then there is just about half as much water that gets into the sump, isn't there?

Do you know whether that happens to be enough water to irrigate that 80 acres?

A. I would doubt that it would be. I don't know.

Q. If it is a fact, and I proved that it wasn't near enough, and they didn't have enough water in the sump to irrigate that 80, the only solution would be to pump additional [91] water directly

(Testimony of J. Leslie Hansen.)

from their pumps on the north end of the farm directly into the sump, and then pump it again in order to—— [92]

\* \* \*

Q. And in examining the land, and in making a determination as to the market value of the balance of this farm after the taking, I can assume, then, that you did not make a thorough investigation as to the irrigation set-up that the farmers would then be faced with?

A. I gave consideration to the irrigation factors, and in my opinion had determined that they would have sufficient water.

As to the additional cost for the pumping that they save now by their excellent management, I didn't consider it in dollars and cents, but only in the general comparison with the farming situation in which water is either pumped or furnished.

Q. Sir, in determining the market value of a given [95] farm, would it not be of interest to a prospective purchaser to determine the particular fertility of the soil involved, and the prior record of production on that particular farm?

A. Yes.

\* \* \*

Q. Are you familiar with the usual or ordinary production on a cotton farm in this valley?

A. I think I am.

Q. Would you consider in excess of three bales an acre an average per year very good or very bad?

(Testimony of J. Leslie Hansen.)

A. I would think it was almost to the point of bragging.

Q. And if I were to show you the gin receipts from the J. G. Boswell Company, showing that over a three year period this ranch exceeded in excess of over three bales per acre on their base cotton allotment, would you be satisfied that this was a pretty good farm?

A. I would want to know more of the details, Mr. LaPrade.

I would want to know whether they skip rowed, and what they considered for their acreage, and all the factors that went into this. [96]

\* \* \*

Q. (By Mr. LaPrade): You have testified that the market value of the remainder of this ranch, and as we observe from the aerial map, you now have left a piece of land approximately 56 or 60 acres on the south side of [97] Glendale Avenue, and you have approximately 120 acres on the east side of Dysart, north of Glendale, and then half a mile up we have approximately another quarter section of land, roughly.

Wouldn't you call that a three-piece disconnected farm?

A. In the sense that you are referring to it, I will agree with you that it is not a contiguous operation. But it is reasonably contiguous, and the operation of this farm, and this farm, and this piece of land, and this piece of land present no difficul-

(Testimony of J. Leslie Hansen.)

ties as compared with the previous operation, so far as efficiency is concerned.

It is true that when you are working this piece and had equipment left here, they wouldn't have to move it far to operate this farm.

Conversely, they won't have to move it far when they take it from here to here. I think the farm is reasonably efficient in operation, even though it is divided as it is, but it is so connected; as contrasted to a farm that might be separated by half a mile of going in a circuitous route and roads to get around, this is practically direct access.

Q. Do you know anything about crop dusting on a farm?           A. Not a great deal.

Q. Are you familiar with the types of poisons that [98] are used by farming agents in this Valley in the crop dusting of cotton crops?

A. I have some knowledge of it, but not intimate knowledge.

Q. You know it is of a dangerous nature, and must be carefully handled, don't you?

A. I believe that is the fact. I read a recent statement to the effect that the most deadly one under proper conditions is safe, but under improper conditions is not.

Q. You have heard testimony where a Capehart Housing Project is being constructed on the land contemplated being taken from the land of Roach and Baker, of approximately, I think the testimony is, seven or eight hundred thousand. I am not sure what the testimony was now in that respect.

(Testimony of J. Leslie Hansen.)

Did you take into consideration in arriving at your after value that there was going to be a housing project in the middle of this farm, and that it might have some effect on whether or not the farmer could thereafter crop dust his farm?

A. Yes, I considered it and thought about it, and couldn't arrive at an opinion about it.

Q. So you have eliminated that element entirely in arriving at your figure?

A. No. Because there are so many ways of dusting, or so many ways of killing bugs, and certainly the lowest [99] price is the matter of crop dusting by air, and I think there are so many elements that go into the crop dusting of this particular farm, with the close proximity of Luke Field, that whether or not this was taken, or whether it would stay was a matter of conjecture, and I didn't go into that too deeply.

Q. Do you have any idea what the ultimate result would be when a big gust of wind blew a big cloud of this poisonous dust into the middle of a housing project?

A. I believe it would be quite disastrous, and rather unpleasant.

Q. As a matter of fact, they might be thereafter precluded from dusting, and, therefore, perhaps precluded from farming their land?

A. Not from farming, but from dusting.

Q. Do you think a cotton gin would loan a farmer money if they thought he couldn't dust his crop?

(Testimony of J. Leslie Hansen.)

A. He can dust his cotton crop without doing it by air.

Q. Did you go into how much more it would cost to do it by rig than it would cost by air?

A. No; I didn't.

Q. Did you think that these factors I am talking about might be considered by a prospective purchaser in the open market, as to what the value of the remainder of the ranch [100] would be?

A. I did not give any specific consideration, for the reasons that I have previously stated. [101]

\* \* \*

Q. Mr. Hansen, referring to Defendants' Exhibit A in evidence, I will ask you to note that on the left-hand side of this document there is a jotted diagonal line, and above it written in, "Noise Clearance Zone."

Do you know what that represents, sir? [102]

A. I believe that it represents the zone that is being dedicated, indicating that the Government will probably in the future take land within that area, or buy it, so that they are not bothered by the noise clearance.

Q. In other words, you will note, sir, on the left-hand corner of the entire tract which is being constructed on by the Government, including the land being taken from these Defendants, there is a corner cut off.

Do you know what that would—and I point out to you just below where it is written "noise clearance," do you know what that would be for?

(Testimony of J. Leslie Hansen.)

A. Do you mean why the corner is taken from this?

Q. Yes.

A. I don't know, but I presume it would be to keep it out of the noise clearance zone.

Q. I refer you again to the subdivision which you talked about yesterday as a comparable piece of land to the land in question on Litchfield Road, and I will ask you whether that subdivision is not within the noise clearance zone?

A. That I can't tell you. I presume it is, but I can't tell you.

Q. When you used that as a comparable sale in arriving at your opinion of value of the land in question in this case, did you make an effort to determine whether that [103] subdivision was within the noise zone?

A. No, I did not, because I didn't use it in that basis. I used it as a basis of the possibility, or the futility of residential development in the area.

Q. Did you make that same investigation with regard to the Rubenstein corner on Litchfield and Glendale?      A. No; I did not.

Q. As a professional appraiser, sir, would it be your opinion that the proximity of a residence to a noise zone created by aircraft wouldn't be a factor in determining whether a person would buy?

A. Yes.

Q. In determining in your opinion the highest and best use to which the Defendants' land could have been put, did you make a study of whether it

(Testimony of J. Leslie Hansen.)

was within or without a noise barrier or zone adjacent to this air base?

A. No; I did not, because it was not a part of the consideration as to the highest and best use of the land, in my opinion.

Q. Do you know whether the Defendants' land, tract H-801, is within or without the noise clearance zone as created by the Government?

A. As far as I know, it is without the noise clearance zone, and I wouldn't have known about the noise clearance zone except that I have casually seen some plats. [104]

Q. These plats, engineering drawings indicate that there is a noise clearance zone?

A. That there is to be a noise clearance zone.

Q. Would that be termed, for our purposes here, a safety zone to stay without? Is that how, in your terms, you would best describe that factor of proximity?

A. It is called a noise clearance zone. And because it did not enter into my analysis of this property, I did not go into it.

Q. You also stated that you used as comparable values land which is west of Luke Air Force Base?

A. Yes.

Q. How far west is the land you are referring to, sir?

A. Most of them are on the road immediately west of Luke Field, one mile, or just at the west periphery, and one section of land that is a mile farther west than that.

(Testimony of J. Leslie Hansen.)

Q. That was farm land, sir? A. Yes, sir.

Q. In your opinion? A. Yes, sir.

Q. Do you know where the entrance to Luke Air Force Base is?

A. As of March 11, 1957?

Q. Yes. A. Yes. [105]

Q. Can you designate for the Jury on the map to your right, which is Government's Exhibit 1 in evidence, where that is on the map?

A. This is Glendale Avenue. The entrance is here just north of Glendale Avenue.

Q. Is there any main entrance from the air base, and headed west to the land you compared it to?

A. No.

Q. How would one go from Glendale, Arizona, to the land you are talking about?

A. Glendale Avenue is at the north end of Luke Field and west, and then south.

Or, if you wanted to travel the country road west of the first road that has been cut off now of Luke Field, they could go to the second road, and come north.

Q. Then, sir, there is no main artery from the populated area of this valley direct to the land you compared, is there?

A. Such as Glendale Avenue direct into it?

Q. Yes. A. No, sir. [106]

\* \* \*

Q. Sir, you testified to comparable values on sales made in 1953.

I ask you this question: Do you have an opinion

(Testimony of J. Leslie Hansen.)

as an expert appraiser as to whether values generally for any given purpose in this Valley have increased or decreased since 1953?

A. In my opinion, they have increased.

Q. To what extent, or can you generalize on that point?

A. I can generalize. In some areas they have increased in great proportions. In some areas they have remained static entirely.

And in some areas they have increased moderately. When you say 1953, if I may, I included 1953 and 1954 in the same period.

Q. Yes.

A. I found by my search that farms in this area west of Luke Field have increased in market price approximately 50 per cent since 1953-1954. [107]

Q. You stated on direct testimony yesterday that it has been a very difficult problem all over the country in connection with building subdivisions at or about government air facilities.

I refer you to Davis-Monthan Air Base at Tucson, Arizona.

Are you familiar with the housing situation there? A. Yes.

Q. Is it not a fact that there are numerous privately promoted subdivisions completely built in, at, or about Luke Air Force Base—I mean, pardon me, Davis-Monthan Air Force Base?

A. There are, in fact, I have set the value and appraised both for government and for private investors on acreage right up and adjacent to the

(Testimony of J. Leslie Hansen.)

clearance zone north of the fence of Davis-Monthan Air Force Base, and there is private housing occupied by not necessarily Davis-Monthan people, but people in the expanding Tucson area, because Davis-Monthan is in the close area of the expansion of Tucson.

Q. And those housing developments, sir, are they not between the air facility and the center of the population?      A. Yes, sir.

Q. There are none of them on the opposite side of the air facility, are they? [108]

A. Not that I know of.

\* \* \*

Q. I am speaking of the cost per acre-foot.

A. I would say the cost in the Adaman Irrigation District was greater than for the amount of water pumped for each one, limiting the Adaman to the same amount that the Roach-Baker would be limited. It would be greater in the Adaman district because of their charge per acre-foot per [109] year.

\* \* \*

Q. Do you know whether Baker and Roach have taken complete advantage of all their underground water supplies with the wells they presently have?

A. I believe that they would get, if they put in, according to the pump company's records, an 85 horsepower motor on the one pump, they would

(Testimony of J. Leslie Hansen.)

get 750 or 930 gallons per minute, and they now have a 75 horse motor on it.

They could increase the flow on that one pump by a heavier motor, according to the report.

Q. That would be a substantial increase in the amount of available water, would it not, by merely changing the type of equipment they are using on the wells? [110]

\* \* \*

But it is not reasonable to assume that they can get sufficient water from that well to the north on a shared basis with the owner of that land to take care of some 200 or more acres with proper water supply.

I don't vouchsafe that these are accurate reports. These are from what I could gather. And based on this information, the Roach-Baker farm is in an inadequate water supply basis, as compared to the Adaman Irrigation District.

Q. Perhaps, then, for the Jury's information, there is no question but what this farm in its entirety is within what we call the critical water area, as designated by the State Land Commission?

A. That is my understanding.

Q. And with the exception of replacement wells to replace a lost well, under the law, as you understand it, they would not be able to drill any additional wells?

A. That is the way I understand it.

Q. So if they were to be faced with a selling

(Testimony of J. Leslie Hansen.)

of the balance of the farm after the taking, they would have to [112] sell their entire holdings or else there would be no available water for any piece they held back, would there?

A. Yes, I imagine they could make an arrangement. But they are getting water now from a well now, on their arrangement. I don't know what arrangement they could make.

Q. Let me phrase it again, sir.

If in the market, after the taking, they were to sell the balance of their farm, and they were unable to find a buyer for anything under the northeast quarter of Section 3, which I am designating principally here, then you would after a sale have two different owners, wouldn't you? That is, Roach and Baker would have retained the south piece and the east piece, and the new owner would own the piece of property with the wells on it?

A. Conceivably any such split-up could be arranged.

Q. Then Mr. Baker and Mr. Roach would have what you term farm land without any water development on their land, wouldn't they?

A. When the water is not available, it ceases to become farm land.

Q. That's correct. That is my point, sir.

A. Yes.

Q. Then for all practical purposes in the market they would have to sell their entire holdings at once to make complete advantage of the use of the land, wouldn't they? [113]

A. No. No.

(Testimony of J. Leslie Hansen.)

Q. But you don't mean to intimate that anybody would buy either the south piece or the east piece without developed water?

A. They could have developed water.

Q. From what source?

A. Certainly, Mr. LaPrade, you are familiar with the fact that they could sell this piece, and sell a percentage of interest in the wells, a 22nd or 31st, or whatever it may be. That is not an uncommon practice.

I can cite you instances that I have made appraisals where farms have a 1/22 and a 1/31 interest in a well, and get water according as their interest may appear. That is a rather common thing.

\* \* \*

Q. You also stated that you were predicating your [114] opinion on a comparable sale of land east of the property in question.

Where was that piece of land?

A. May I enlarge on that just a little?

Q. I want to know where it is generally.

A. The land in question is just a quarter of a mile south of Glendale Avenue in this area on the desert.

There were two sales in there that I considered. But I had about 15 or 18 sales in the whole area. Of course, there is an awful lot of land out there.

Q. Sir, was that particular land cultivated?

A. No; that was desert land.

(Testimony of J. Leslie Hansen.)

Q. That was desert land? A. Yes, sir.

Q. That was the land the sale of which you termed as comparable?

A. No; I say that it was part of the sales that I got in my search. I couldn't go and pick out lands definitely pertinent to it. I had to find any sales in the area anywhere around, and then make the search of those that were comparable.

Q. Was any of this other land fronted on Glendale Avenue? A. No, sir.

Q. Was any of it fronted on Luke Field?

A. No, sir. [115]

Q. Was any of it in the year 1957?

A. Yes. Some of the sales were in 1957. Some were subsequent to the March 11th date, and I couldn't entertain them for the purpose of this trial.

Q. To clarify generally, your entire testimony, Mr. Hansen, I take it, then, that in your opinion the market value of this land after the taking, in terms of dollars and cents, did not include any element of what we term severance damages?

A. That statement isn't quite correct. I considered severance damages as to whether or not there was severance damage in applying under the premise that I was working in determining my opinion of the value, and because of ascribing a greater value to the land on the Glendale Avenue side of this farm, \$200 per acre more for the land in this part than for the land a half a mile to the north, I

(Testimony of J. Leslie Hansen.)

felt that, as I explained yesterday, that something like you can't have your cake and eat it.

If they have a speculative value, it pays to sell, and that takes care of whatever severance damage there may be. So I report no severance damage because of the difference, in my opinion, in the two plots.

Q. In your opinion, there is no value of this farm for the taking for any other purpose other than as farm land? [116]

A. That isn't what I said, Mr. LaPrade.

Q. Other than the slight speculative element which you have added on the frontage on Glendale Avenue?

A. Yes, sir; that is my opinion.

Q. Your information concerning the Roach-Baker wells, did you know that they had been tested to a maximum production of 3700 gallons per minute?

A. Not according to the information I have, sir.

Q. If that was the fact, as I assumed in my last question, rather than the information at your disposal, your opinion of the water supply might be in error?

A. If that is a fact, that these wells produce in practical practice 3700 gallons of water per minute, my opinion of the value as I have it would be increased.

Mr. LaPrade: That is all. [117]

(Testimony of J. Leslie Hansen.)

Redirect Examination

By Mr. Eubank:

\* \* \*

Q. Now, in regard to the water and this crop testimony. It is my understanding that your testimony is that after the taking by the Government of the 132.60 acres, that there should be, in your understanding, sufficient water available then to double-crop the land, is that correct?

A. I didn't make that statement, Mr. Eubank, but there will be considerably more water available for the remaining land, by virtue of the fact that there would be 132 acres deducted from the productive portion of the farm. [119]

\* \* \*

Q. Are you familiar with the Military Housing Act? A. Yes, sir.

Q. And are you familiar with what is known as the Wherry Housing Act?

A. There are three branches of housing covering military housing.

Q. Name the three, if you can.

A. The Wherry Act, which is now obsolete; the Capehart Housing Act, and the Defense Housing Act.

Q. Were those in existence on March 11, 1957?

A. The Wherry Housing Act, the last act, the Capehart [123] Act, which was the last act passed, provides that where a base has Wherry Housing

(Testimony of J. Leslie Hansen.)

and Capehart Housing is to go in, that the Wherry Housing projects must be sold to the Government, that is, the builders' interest, so that there is no more building under the Wherry Housing Act, but there is building under the Defense Housing and the Capehart Housing Act.

Q. In your consideration of this property, and your declination of the idea that it is residential, did these Acts play any part, in your opinion?

A. A major part.

Q. In what respect?

A. These acts were on the books for the purpose of providing housing to the bases.

Because of the lack of soundness in investment to the private builder, there has been little or no private building of housing in the vicinity of the military bases, the exception being, perhaps, in the state of Arizona, definitely Davis-Monthan, because of its proximity to Tucson, and the expansion of Tucson towards the Hughes Plant, and in the desert area south and east of Tucson where the development has taken place.

Private capital has not gone in, and in order to provide housing, the Government has provided for housing for military and civilian personnel at these bases, and the [24] housing is guaranteed under the Federal Housing Administration Act on a 100 per cent guarantee.

Q. Guarantee the actual building costs, is that correct?

A. That is correct. The value of the property,

(Testimony of J. Leslie Hansen.)

the FHA furnishes 100 per cent, and they under some of the regulations set the rent in connection with the military installation, and in others the military does, but it is based on a definite Congressional prescribed rate of return of investment.

Q. Now, you have heard testimony also to the effect that this base is now permanent?

A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

Q. Did you take into consideration any risk factor, and the fact that Luke Field is a Government air base? A. I did.

Q. In what respect?

A. Luke Field is growing, and Luke Field is now going to have another facility of some 10 million dollars expansion, and it is going to be greater than it has been.

Luke Field, prior to the formal declaration of permanency, was about as active as it is now as far as personnel are concerned and people being there, but inasmuch [125] as it is created by an act of Congress, an act of Congress can deactivate it.

Our defense effort can change due to war conditions, and it is a military installation, and that is the background of why private capital does not go in for these areas.

Q. Do you think it's sound, or it would be sound for an investor to invest money on the basis of personnel at Luke Field?

A. No, sir. Not in the face of competition of Capehart housing. [126]

(Testimony of J. Leslie Hansen.)

\* \* \*

Q. Mr. Hansen, would you tell us why at this time you think that the Rubenstein sale was an indicator of market, although the sale occurred in 1953?

A. I don't believe that I said that the Rubenstein sale was an indicator of market, but that I used it as a basis of comparison in using the price he paid for it, as [128] compared with the price of the farm lands in the area, the price that Baker-Roach paid for the land in December, 1953, the price that the farmers west of Luke Field paid for their farms in 1953, and performed in my mind, or, rather, concluded in my mind a percentage of ratio of, and I am not going to mention dollar amounts, Mr. LaPrade—an amount of ratio of this farm as compared with these.

This was in percentages. I would like to not use the actual percentages, but let us say these might be 100 per cent, and these would be 100-plus per cent, because it sold at a greater price in 1953 than these others did, and that this did.

Q. By the others, you mean farms in the Adaman Irrigation District?

A. In the Adaman Irrigation District, and the subject farm, and I performed a ratio in my mind of percentage of how much better this one was from a market standpoint than this, and then because of the reactivating, and the greater activity of Luke Field, and the speculative trend that will continue

(Testimony of J. Leslie Hansen.)

along Glendale Avenue, I readjusted that figure so that I got a percentage of how much this was, of what I thought this was, and then in my mind I determined what I thought the value of this piece was as of March 11, 1957, and that was part of the process that I used in arriving at my opinion of value. [129]

\* \* \*

### Recross-Examination

By Mr. LaPrade:

Q. You testified, Mr. Hansen, that this little subdivision on this field which you have circled on Government's Exhibit 1, that the lots sold at \$600 apiece?

A. Some of the residential lots, yes, sold at \$600.

Q. How many lots were there per acre?

A. Approximately 4 and a third. There is approximately [130] 224 acres in the plotted subdivision. I have the plat here.

Q. Were the lots placed on the market, the land, that is, was placed on the market at the average of approximately \$2400 per acre, figuring each lot in that acre?

A. That would be if you reduced it to that sort of a term, yes, sir.

Q. And some of them did sell in 1953?

A. I will give you the dates on every sale, if you want, and the docket and the page.

Q. All right.

(Testimony of J. Leslie Hansen.)

A. The earliest sale I find is 1954, August 20, 1954.

Q. This is the subdivision that you referred to yesterday as being a program whereby the owner subdivided, sold individual lots to prospective purchasers who were buying unimproved land, and would be required to produce their own financing?

A. You brought that out by questioning.

Q. That was the fact of the matter?

A. That, I believe, is the fact, yes, sir.

Q. This wasn't an enlarged subdivision where a developer had come in and put in streets and curbs, and had provided mortgage-backed financing, and had an opportunity for a prospective purchaser to buy a home lock, stock and barrel, as we commonly know subdivision developments?

A. No, it is not. [131]

Q. In this day and age, was it?

A. No, it was not.

Q. And yet even commencing in 1953, the \$2400 figure was set per acre after the land had been subdivided into lots?

A. Well, now, that isn't—

Mr. Eubank: I object to that, your Honor. I don't think that was his testimony at all.

The Court: The witness is going to answer. He was asked a question.

The Witness: That is somewhat of a mis-statement, Mr. LaPrade.

Q. (By Mr. LaPrade): Clarify it.

(Testimony of J. Leslie Hansen.)

A. Yes. I will be glad to. Thank you for allowing me to.

When a man agrees to pay \$600 for a lot, and puts \$10 down, he is always going to pay considerably more than he would were he buying that lot for cash, and these people have agreed, and the fact that I took into consideration that to date only a certain number have been sold doesn't conclude that these lots are selling on the basis of \$2400 per acre. Far from it.

But it does indicate that these people have agreed to purchase, and many of them, I would imagine, even as you or I might, would do it for a speculative purpose, we put [132] a small amount of money down, and if it goes up we have got something, and if it doesn't, we can always let it go, so I wouldn't say that it is \$2400 an acre as evidenced by these sales. [133]

\* \* \*

R. R. McGREW

witness for the Defendants, having been previously duly sworn, resumed the stand and testified further as follows: [134]

Direct Examination

(Continued)

By Mr. LaPrade:

\* \* \*

Q. Would you clarify that for the Jury's benefit as to what is the noise clearance zone, and what part it plays in arriving at your personal opinion?

(Testimony of R. R. McGrew.)

A. Well, the noise clearance zone is an area in which there is a possibility and fact that noise is created from military planes landing and taking off, and making turning movements.

And, of course, any housing that would go within that zone would be subject to those noises, and if the property were not in that zone, it would naturally be more adaptable for residential use, and consequently more valuable for that purpose.

Q. I refer you to Government's Exhibit 1 in evidence, and I am pointing now to the Tract H-801, the land being taken by the Government, and ask you this:

Do you have an opinion as to whether that particular tract of land is more or less desirable for the use to which you have subscribed than the land immediately west of it, which is closer to the air base?

A. I think it is more valuable, because it is that much further away from the noise clearance zone, still it is close enough to the air facility to serve the purpose for close housing.

Q. I will ask you to examine the area I am pointing to on this same exhibit, outlined in red, farther south, on [136] the east side of Litchfield Road, which has been testified to as a subdivision created in 1953.

Do you have an opinion as to whether the success of that project might have been affected by its proximity to the noise zone to which you have referred?

(Testimony of R. R. McGrew.)

A. I think there is a possibility.

However, I think there was a greater effect on it than that.

Q. What would that be?

A. That is the effect that the project in question is being undertaken, and naturally competing with that.

As a private enterprise, it is too hard to compete, and consequently it hasn't moved as well as if that project was not contemplated and in the [137] making.

Q. I note that Tract H-801 is not colored in in green as in Defendants' Exhibit A in evidence.

Do you have that accurately drawn out so that the Jury may determine which is the remaining land?

A. Yes, because on this map the part that is colored green is the remaining land. Plus the part marked "School," and the part that is not colored green within the heavy boundary of the property is the portion of the Baker-Roach property that is in the project.

Q. And you have the entire outside boundary, of the entire Roach-Baker holdings——

A. In a heavy broken line.

Q. Heavy broken line?

A. That is right. [138]

(Testimony of R. R. McGrew.)

Cross-Examination

By Mr. Eubank:

\* \* \*

A. When I am referring to highest and best use, I am talking about the use that would result in a permanent development of any area, or the final economic use for the [139] property within a reasonable time, of course. You can't predicate a hundred years, but I mean within a reasonable time, the best economic use for a piece of property.

\* \* \*

Q. Now, you did testify that one of the factors that [140] led you to the opinion that the highest and best use of that property was residential was the fact that there was a trailer court that had just gone in on Glendale Avenue, do you recall that?

A. Yes, sir.

Q. I asked you where I am pointing on Government's Exhibit 1 for identification if that isn't the trailer court that you were referring to?

A. I believe that is the trailer court in a partial stage of completion, or of development.

Q. Isn't it true that that trailer court was not there on March 11, 1957?

A. I am not certain; I believe it had been approved for zoning at that time. The actual construction may not have taken place. I am not aware just when it was started, but I am pretty certain

(Testimony of R. R. McGrew.)

that the zoning had been approved at that time for the trailer court.

Q. Would you take this and circle the trailer court?      A. As it exists on this photo?

Q. Yes. [141]

\* \* \*

BERT CAVANAGH

called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. LaPrade:

\* \* \*

Q. What is your occupation?

A. Real estate broker, appraiser, builder, and I also run a finance company.

\* \* \*

Q. How long have you been in the real estate business in Phoenix, Arizona?

A. Since 1942.

Q. Prior to then, what was your experience in this field? [144]

A. I started in the real estate appraising and building business in Chicago in 1919.

Q. Describe briefly your activities in that regard.

A. I rented three offices in Chicago, one in the downtown area, one in the north part of Chicago,

(Testimony of Bert Cavanagh.)

and one in the south part, and I constructed, or built hundreds of buildings, investment properties, also had subdivisions, and then had a general brokerage business, insurance and appraising.

Q. When did you leave Chicago? When was that, sir?      A. I left Chicago in 1934.

\* \* \*

Q. Have you ever had occasion to give instruction in real estate appraisal work?

A. Yes; I did.

Q. Describe it briefly.

A. We had a co-operative group in Chicago for a number of years of the realtors from the south part of Chicago. We had an educational program, and all of us combined, and we would take different phases. One fellow would give instruction [145] on real estate, one on appraising, another on marketing, another fellow on housing investment, and I specialized on investment and appraising.

\* \* \*

A. I started with A. D. McClain in 1942, and I became sales manager in 1944.

Then I opened my own office, and, in fact, I had three offices. I had 39 salesmen, and conducted a general brokerage, appraisal, insurance, and I was also consultant for investors, and a lot of my customers are out-of-state people, and I go back east

(Testimony of Bert Cavanagh.)

quite a bit, and I consult with them on what I think are good investments in this Phoenix area.

Q. In your experience in that regard, have you had occasion to be called upon or employed to appraise lands for any given testimony?

A. Yes, I have. [146]

\* \* \*

Q. Are you familiar with the land at or about Luke Field, Arizona? A. Yes, sir.

Q. Have you ever had occasion to testify as a witness concerning the appraisal of lands in courts in this state? A. Yes, I have.

Q. Where is that?

A. I have appeared in various courts. I never have in federal courts, but I have in the superior courts.

Q. Have you had occasion to acquaint yourself over the years with the residential subdivision business in this Valley? A. Yes, sir.

Q. In that particular regard, what has been your general area of experience and your [147] contact?

\* \* \*

Q. When did you first become familiar with this particular land?

A. About 1943, I had three boys that went through Luke Field, and they graduated there, so I used to go with them quite often, and my son-in-

(Testimony of Bert Cavanagh.)

law was also an instructor out there, so I, myself, personally became interested in that area, thinking that it had great potential for housing [150] development.

Q. Sir, in your opinion, what are the factors which have the important play in determining what the highest and best use to which any given land can be devoted?

A. Well, in a piece of property such as that, you would first look for its general location with respect to, say, for instance, like the City of Glendale, the City of Litchfield, City of Phoenix, then the next thing is its accessibility to highways coming from centers of population.

The next thing would be its location in the area in which potential growth would possibly be coming.

The next thing is the size of the plot of land that is available for use. The type of land, whether it was rocky, whether the terrain is easy to build on, or whether it is something that is very like, if you have got a lot of caliche, that would make it very expensive to build on.

Then you would look for the accessibility of your utilities, whether there are any schools, churches, or shopping centers within the area.

And in this particular case, I would say here that it was very important, because you have a captive sales. [151]

(Testimony of Bert Cavanagh.)

Q. (By Mr. LaPrade): Mr. Cavanagh, what are the particular factors in connection with Tract H-801 which you have personally considered as having a bearing upon the highest and best use to which that land could be devoted on March 11, 1957?

A. The very important thing is the fact that you are close to a source of sales.

Q. What is that, sir?

A. That is Luke Field. The fact that there is very little housing that can be had closer than possibly four miles on the south, and possibly seven miles on the east, eight miles on the east, with the exception of one subdivision which was about a quarter of a mile south of Glendale Avenue on the east side of Litchfield Road.

And I never considered that as much competition to a builder, because of the fact that was being accomplished on a very difficult method of selling your lots first, then having the individual get his own financing. The fact that [152] the roads and the other utilities were not put in leaves it in a rather dishevelled condition, and the fact that there was a wash through the property, and that it was closer to the sound area or noise developing from the flying and the testing of motors at Luke Air Force Base.

Q. What other factors in connection with the Tract H-801 did you consider?

A. I considered the fact that there was a large enough area to make it important enough for a

(Testimony of Bert Cavanagh.)

builder to feel that he could take and go out there and do a good substantial deal.

The fact that the land was level, the fact that there was water available, and that there were other utilities available, and that there was, in my opinion, a crying need for housing.

Q. Were you acquainted with the zoning on this property at the time you were familiarizing yourself with all of these different factors?

A. Yes, sir.

Q. And what was that?

A. The zoning was unrestricted for the main part of the farm, and there was an area on the southwest and the northwest corners of Dysart and Glendale that were approximately 300 feet square zoned C-1.

Q. Did that have any influence upon your opinion of [153] the use to which this land could be devoted? A. Yes, sir.

Q. Are you referring now to your examination of the entire Roach-Baker Ranch, or merely the tract which was taken?

A. My study was with the entire Baker Ranch, but in reality the greatest source I felt of value was in the southeast quarter, which is that property which is facing Glendale Avenue and Dysart Road, consisting of approximately, well, there was approximately 160 acres, and about 19 acres, plus or minus, was sold out of this property, so it leaves about, oh, around probably 140 acres that was being seriously considered for a housing project, in my

(Testimony of Bert Cavanagh.)

estimation.

Q. Have you made a determination as to how the land could have best been devoted?

A. Yes, sir.

Q. That is, to be more particular, sir, have you arrived at an opinion as to what the highest and best use to which Tract H-801 could have been devoted on March 11, 1957?

A. It would be a housing development—— [154]

\* \* \*

The Witness: What was the answer again?

Q. (By Mr. LaPrade): Have you arrived at an opinion as to what the highest and best use to which Tract H-801 could have been devoted on March 11, 1957, or within the reasonably near future thereafter?

A. Yes, sir.

Q. What is that opinion?

A. That it would be for a housing development, multiple unit development, and for a commercial shopping center.

Q. Where would the shopping center be?

A. The commercial shopping center that I would suggest would be 20 acres running on the southeast corner of the southeast corner of this section running approximately 660 feet north and south on Dysart, and approximately 1295 feet on Glendale Avenue, running from the corner of Dysart west. That would be approximately 20 acres.

Q. In other words, your recommendation on

(Testimony of Bert Cavanagh.)

that point would include more commercial acreage than they actually had zoned?      A. Yes, sir.

Q. But for the highest and best use, that was your opinion of how you would devote the land?

A. Yes; that is what I figured it should be developed for its best use. The immediate west of this particular 20 acres I would zone and have built multiple units in 10 acres [155] fronting on Glendale Avenue, that would have approximately 1320 feet along Glendale Avenue, and approximately 330 feet deep.

Q. Have you drawn a little map or tract drawing of the use to which you would put it?

A. Yes, sir.

Q. May I see it, sir?

A. Yes. (Handing to counsel.)

Q. I note that on this document, which will be designated Defendants' Exhibit F for identification, that you have included therein figures indicating what apparently is acreage.

Will you explain what this document represents to the Jury?

A. This which is known as my exhibit, I had it Exhibit "A," consists, at the southeast quarter of Section 3, Township 2 North, Range 1 West, and I have it broken up into that area which I felt that as of March, 1957, would be its best development.

The use for which I figured was its best. I have taken and indicated the area which was out because it had been sold to the school, and then I took and developed here the 20 acres for the shopping, the

(Testimony of Bert Cavanagh.)

10 acres for the multiple dwelling, and the balance of the acreage for housing, possibly R-2. [156]

Q. Mr. Cavanagh, under ordinary circumstances, are comparable sales of value in determining the market value of any given piece of land?

A. Very much so, yes, sir.

Q. Would that have to be comparable, though?

A. In other words, the situation would have to be comparable. That is just what it means.

Q. In your examination of the Tract H-801, have you made an effort to determine whether there were any sales which in your opinion were comparable, in the immediate vicinity?

A. I made the study on two or three occasions.

Q. Have you found any sales which in your opinion were comparable?

A. I could not find any.

Q. What are the reasons why, in your opinion, these other sales in the vicinity are not comparable?

A. What sales are you referring to?

Q. Any sales.           A. Any sales?

Q. Yes.

A. Well, there are several reasons. One is, first, location. Next is the size of the land. The fact that they were not as close to the source that I felt needed housing, and that the terrain of the land was such that it [157] was washy, so as comparing for comparable area or land for the subject property, I honestly could not find one. I just couldn't find one.

Q. There is in evidence testimony by an expert

(Testimony of Bert Cavanagh.)

witness that certain sales were considered by him. And I refer you to the southeast corner of Litchfield Road and Glendale Avenue, wherein a sale was made in the year 1953.

Do you have an opinion as to whether that is comparable and of assistance as of evaluating Tract H-801 on March 11, 1957?

A. First, I eliminated it because of the time lapse. I didn't feel that it was current enough to take and have a base on the market value of land in 1957.

Secondly, it was not comparable because of its size, and it was for a different use.

Q. Has anything occurred in recent years which would have any additional effect as to whether it was comparable?

A. No, sir, it was never developed, in my opinion, in any relation or comparable manner in which a subdivider or builder would develop the property in question.

Q. As a matter of fact, there is commerical usage on that piece of land now, is there not?

A. Yes, sir. [158]

\* \* \*

Q. Do you know what the status of Luke Air Force Base is with respect to the program?

A. It is a permanent base, and has been since April, 1956.

Q. Do you have an opinion as to whether that fact alone has any bearing upon the market value as of March 11, 1957, on Tract H-801?

(Testimony of Bert Cavanagh.)

A. Yes, it has a very definite bearing on the value.

Q. What is your opinion of that bearing one way or the other?

A. It gives stability to what might have been a base that could have been withdrawn very easily, and the need for housing would have been eliminated, and the fact that the base was made permanent, it just leaves it to the Government, in other words, to take and provide some adequate housing which was not necessary before.

Q. Do you have an opinion as to whether an investor or subdivider as of March 11, 1957, would be willing to pay for tract H-801 any more money on a per acre average than [159] for farm values?

A. Yes, sir.

Q. Considering your experience in the appraising and real estate field, and all of the matters to which you have testified here today, do you have an opinion as to the market value of the entire Roach-Baker holdings as of March 11, 1957, before the taking?      A. Before the taking, yes, sir.

Q. Do you have an opinion?      A. Yes, sir.

Q. What is that opinion?

Mr. Eubank: I object to that, your Honor. **There** has been no foundation laid for his answer to that question. Under the Ninth Circuit Honolulu case, I don't think it has been adequately shown that the foundation has been laid.

Mr. LaPrade: I would like to be heard on the point.

The Court: All right.

(Testimony of Bert Cavanagh.)

Mr. LaPrade: The Honolulu case to which he refers singles out that comparable sales are very weighty. In this instance, the evidence is conflicting as to whether the sales are in fact comparable, in which event there would be no necessity for that foundation. [160]

\* \* \*

The Witness: In my opinion, the value of the entire piece as of March 11th, 1957, was \$611,695.

\* \* \*

Q. (By Mr. LaPrade): Mr. Cavanagh, do you have an opinion as to the market value as of March 11, 1957, of [161] the remainder of the Roach-Baker lands after the taking?

A. After the taking?

Q. Yes, sir.           A. \$342,415.

\* \* \*

Q. Would you designate the difference.

(Witness writes on board the figure \$269,280.)

\* \* \*

Q. Mr. Cavanagh, in arriving at your opinion of the market value of the Roach-Baker ranch before the taking, please explain how you arrived at that figure, and what values you have attributed to each particular parcel of this ranch? [162]

\* \* \*

(Testimony of Bert Cavanagh.)

A. Of Section 3, yes, sir. I am talking about the southwest quarter, southeast quarter, that is the property that is in question. The southeast quarter of Section 3.

Now, taking the southwest corner of that property, starting at the corner of Dysart and Glendale, and running 1255 feet, which eliminates the road, figuring that at \$100 a foot, which is the commercial zoning, I have a valuation of \$125,500.

Q. How deep is that?

A. That runs 660 feet, or 595 net.

Now, that is equivalent to \$6000 an acre for commercial property.

Q. That would be the frontage on Glendale?

A. Yes, sir. [163]

\* \* \*

A. Then I took the next 1320 feet running from that point west, on the north side of Glendale Avenue for multiple zoning, at \$25 a foot, having a valuation of \$33,000, or \$3300 an acre for multiple-family land. [164]

\* \* \*

A. The balance of area, there was approximately 19.7 acres was removed, already sold to a school, and it left this little area of 100 feet here on the top, and this area here which I figured for zoning for residence, of approximately 110 acres, and I had a valuation of that at \$1500 an acre, which gave \$166,395 for the area devoted to residence.

(Testimony of Bert Cavanagh.)

\* \* \*

A. The balance of the ranch. I figured that we have frontage on Glendale Avenue, on the south side of Glendale. You have frontage on the east side of Dysart. You have some frontage on Northern Avenue, so taking it all in all, figuring that a lot of it was removed from the section lines, I put a valuation of \$900 an acre on the balance of the property, that is, of the entire property.

Q. Then I take it by your testimony that the land which was actually taken by the Government is the most valuable portion of this particular holding of Roach-Baker?      A. Yes, sir.

Q. And you would attribute that to the corner in the front?

A. Its location on a double section line corner, the [165] fact it is on the main road where people from Phoenix and Glendale travel, and that it would lend itself to a very fine commercial development also for housing, multiple housing, which in my opinion was very much in need. [166]

\* \* \*

Q. Assuming that the Government's witness is correct, for the purpose of our argument here, that this is only farm land, and has no value for any other purpose, that Luke Field was not there, and that it had no effect on the market value of this land.

(Testimony of Bert Cavanagh.)

Have you considered this matter from that point of view, as to whether there would be any depletion in market value on the remainder land after the taking?      A. Yes, I have.

Q. And what are the factors which assist you in arriving at an opinion in that regard?

A. Well, to enumerate some of them: first would be the disruption of your irrigation system.

Q. In what respect?

A. Which would mean that the laterals that were in existence would have to take and be moved, because the property was in the center, in other words, block the progress of the [167] water to the south.

It would mean that you would lose your tail water, which is the water accumulated in the sump in the south, which water was used to irrigate parts of the east land.

You would have to relocate your sump and pump. You would have to take and level for gravity flow the land east of Dysart Road, and there is quite a hump in it.

Then the fact that the buyers would be reluctant to purchase because of the fact here that the Government might need more land adjacent to this, this housing project might go on, and they figure, "will they need more land."

So the fact is a buyer says, "I want to stay out of that picture."

The next thing is the damage suits that could arise by reason of dusting, working it as a field without having the closeness of homes and children,

(Testimony of Bert Cavanagh.)

and other things, that the dusting would certainly be disastrous, I think, and you would have a lot of damage suits.

The next thing, you have the loss of a housing program.

Q. Explain that, sir.

A. In other words, this land, in my opinion its best use was for housing program. If the Government takes this part of the deal, they have taken away the part of the land which would be the best land for housing, so a buyer looking [168] at it would say, "Well, what have I got left? I've got a farm divided into two or three different parcels."

So the next thing is the loss of commercial acceptance. If you have a shopping area that in these days, say, for instance, from 1955 on, you have to provide a lot of parking, and this parking is very essential, so if you have an area which is too small, you can't attract the major chain stores, because they feel that they have to have a lot of parking, and a lot of dollar volume.

Q. Explain specifically with reference to which piece of land are you now referring?

A. I am referring now to the southeast quarter, that is the land from which this property is taken, that is the immediate quarter section.

Q. In other words, the northwest corner of Dysart and Glendale which was zoned commercially?

A. Yes, sir.

Q. Is left with how much commercial now?

(Testimony of Bert Cavanagh.)

A. 300 feet by 300 feet.

Q. Approximately how many acres is that?

A. About 200 acres.

Q. Could that be 600?

A. No. On both sides you have——

Q. I understand. I take it your opinion would be that that is not a sufficient acreage for a successful commercial [169] development on that corner?

A. I am sure it is not.

Q. Do you have an opinion as to whether that is decreased or increased, the value of that corner?

A. If you leave it with that small amount of commercial, then you have certainly depreciated the value of that corner. [170]

\* \* \*

Q. Mr. Cavanagh, when you are called upon to render an opinion as to the market value of a given piece of land, and you do not have what in your opinion would be comparable sales by which to be guided, then how do you arrive at the market value figure?

A. That is a part of your experience that is gained over a period of years, where you have either developed some other property, or have purchased other property, and had developed it, that could be developed with the same [171] method that this particular piece of property could be developed.

Q. And in this particular piece of property, when you refer to subdivision-residential development on the rear acreage, what, in particular, type of residential construction would you have in mind?

(Testimony of Bert Cavanagh.)

A. Residential construction, you mean with regard to size of lots?

Q. Yes, what class, or price?

A. They would be in the medium-price class, running from approximately, oh, from \$9,000 to \$13,000.

Q. And are you able to calculate what that class of residential subdivision would support in the way of investment in land in order to make it profitable?

A. On that type of an operation, if you could buy your land, that is, your residential land as naked land for \$1,500 an acre, it would be very profitable.

Q. Have you considered the value of this land from that point of view?      A. Yes, I have.

Q. Referring to subdivision land generally in this Valley, with respect to market values, I now refer you to a scale of values from high to low.

Can you enlighten the Jury as to where this value that you have attributed to this land would fall in that scale? [172]

\* \* \*

Q. Calculating a per acre average price on the land that was taken, have you figured out what this figure of \$268,280 represents on the 132.4 acres which was taken?

A. It is approximately \$2,000 an acre.

Q. And the price of \$2,000 per acre for the use of subdivision purposes, where does it fall in a category, or range in values with other subdivision land in this Valley?

(Testimony of Bert Cavanagh.)

A. That is about what the developers are paying for lands where you have to sell houses from about \$9,000 to \$13,000.

Q. Do you know whether there is any land which is best suited for subdivision purposes, and where there is a market for same for that purpose in this Valley which can be purchased for less than \$2,000 an acre? A. As of that date?

Q. Yes, sir. [173]

A. Not comparably located with the advantages that I spoke about this morning, and with the ready market already developed for you, I don't know of any. [174]

\* \* \*

### Cross-Examination

By Mr. Eubank: [175]

\* \* \*

Q. Would you define for me first the term used, "The highest and best use"?

A. The highest and best use is the use to which a property can be put economically, and to show the best return, and also with regard to the type of property, as to whether it should be developed, should be farm land, or should be subdivision land.

It is the best use to which that property can be put at the time.

Q. At the time? A. Yes, sir.

Q. And this would be March 11, 1957?

A. Yes, sir, and it also takes into consideration

(Testimony of Bert Cavanagh.)

the fact that there can be potential growth in the future. [176]

\* \* \*

Q. Now, isn't it true, or do you know of your own knowledge that comparable sales are the best evidences we have of a market, of a going market?

A. Yes, sir.

Q. I understand that it was your opinion that there were no comparable sales in the vicinity of this taking?

A. In the immediate vicinity, and at the time. Time is a big element there, too.

Q. Now, in order for you to come to that conclusion, did you examine sales in the area?

A. Yes, I did. [177]

\* \* \*

Q. My understanding of the main basis of your opinion that this area is residential, multiple housing, I believe, and commercial, is the fact of the soldiers stationed at Luke Field?

A. That is one of the reasons. Soldiers, plus civilians.

Q. And the payroll, you might say, of the Luke Field itself?

A. Yes, sir, that is a very very big influence, yes, sir. [182]

\* \* \*

Q. My understanding, Mr. Cavanagh, is that you did not search further than that immediate area

(Testimony of Bert Cavanagh.)

there because you felt in your own mind that any sales like up in the Adaman Mutual District were not comparable, is that your position?

A. Yes, I definitely say it was not comparable.

Q. Consequently, you would rule out any of those sales, even though they are only a mile from the property? [179]

A. I ruled it out because they are not comparable, in my opinion, that they were not comparable.

Q. They are not comparable in your opinion because of the location of the Luke Air Force Base, is that correct?

A. No, sir. That is only one of the advantages. One of our biggest reasons is because of the fact it is on the opposite side coming from where the population centers are.

Q. From the road?

A. Yes. That is very important. Coming from Phoenix, and coming from Glendale you would have to go by Luke Field to get to the other side of it.

Q. Okay. That is for residential. You will admit that that would only make a difference in the residential development?

A. It would make a difference in the home development.

Q. I mean why the sales are not comparable up in the Adaman Mutual District from this land that we are talking about.

A. Because of the fact that is very important, and the fact that it is on a main arterial road

(Testimony of Bert Cavanagh.)

coming from town, it is closer to Luke Field, and that it would be more natural that you would subdivide that sooner than going farther away from it. The water situation—— [180]

\* \* \*

Q. Now, what type of an investment are you contemplating out there on this \$2,000 acreage, this multiple housing you are referring to?

How many hundred thousand dollars?

A. Pardon?

Q. How many hundred thousand dollars?

A. The shopping center would undoubtedly cost, oh, possibly you would probably start with about an investment in your shopping center of about \$300,000 to \$350,000.

Q. It would be a pretty large shopping center?

A. Not in these days, it isn't. [183]

\* \* \*

Q. You understand we are interested in March 11, 1957, don't you?

A. I say, I am bringing it up. I was interested not only on March 11th, I saw the potential growth from 1943 to 1957.

Q. In other words, the potential of the base at Luke Field?

A. Luke Field, and other people farming, going into the area, new people coming into that area, which is a matter [184] of growth.

\* \* \*

(Testimony of Bert Cavanagh.)

Q. Where is all this demand for subdivisions out in that area? Do you know how far Long's Maryvale is from that [185] area?

A. Yes, he is around 53rd, 55th, 60th.

Q. Almost seven miles?

A. I would say between six and seven miles. Just comparatively, if you want the comparison.

Q. How about Glendale Avenue?

A. Can I ask you about the comparison. He took a new area at the time he went out there that I myself, as an appraiser, I thought was a little premature. He went out there and developed over 5,000 houses, built shopping centers which weren't apparent before he got there. [186]

\* \* \*

Q. Isn't it true that at this moment all of those people that are at Luke Air Force Base, that are living off the base, are actually living in some form of rental in the area right now? [187]

A. What do you call by the area? Six or seven miles away?

Q. In Glendale, Litchfield, sure, six or seven miles away.

A. I say, that is practically the nearest subdivision for either the personnel, or for the force out there.

They really have to travel from Glendale, or to Litchfield, or into Phoenix, a great percentage of them go to Phoenix. [188]

\* \* \*

(Testimony of Bert Cavanagh.)

Q. Okay. Let us get back to Tract H-801.

Your testimony indicates that there is a scarcity of land in that area on which to put houses.

Is there any scarcity of land around there, Bert?

A. I would say scarcity of comparable land, yes, sir.

Q. You are using comparable land, not in the sense of comparable sales?

A. As to location.

In other words, if I was a developer, and I had my choice, I would certainly take that land which is under consideration here rather than the wash land, or waste land, or some farm land farther removed. Just personally, as a developer, that would be more important to me.

Q. Even though it costs you \$2,000 an acre?

A. Yes.

Q. And you might get the other land for half that?

A. And probably have the same results as in the subdivision to the south. The land is not good, and therefore it is not selling. [189]

\* \* \*

### Redirect Examination

By Mr. LaPrade:

\* \* \*

Q. Assuming that the Government's theory is the correct theory, that the highest and best use is for farm land purposes only, and we are not con-

(Testimony of Bert Cavanagh.)

cerned with values for any other purposes, and considering the physical lay-out of the [192] remainder of the farm, as it were, would you have an opinion as to the market value of the remainder of the farm as compared to before?

A. After the severance of the property in question?

Q. Yes, sir. Or to pinpoint it on a per-acre average basis, would you have an opinion as to whether there was a decrease in the market value per acre?

A. I think there would be a decrease in valuation of approximately \$400 an acre. [193]

\* \* \*

Q. Have you worked out an opinion as to farm values in connection with this land on a hypothetical basis, assuming it has no other value?

A. Approximately \$700 per acre, under the conditions of having three separate locations, and the reallocation of water, and the damage that you sustained because you cannot crop dust.

Q. By that do you mean to say that the remainder of the land as farm land would have a value of \$700 per acre? A. Yes, sir.

Q. Then you are referring to 356 acres at \$700 an acre? A. Yes, sir.

Q. That is after the taking?

A. That is after the taking.

Q. And what, in your opinion, is the market value of [194] the entire farm?

A. \$1,100 before taking, taking into consideration everything.

(Testimony of Bert Cavanagh.)

Q. As farm land? A. Yes, sir.

Q. 488 acres at \$1,100 an acre?

A. Yes, sir.

Q. Those are your figures multiplied out?

A. Those are my figures.

Q. Would you, Mr. Cavanagh, without specifically multiplying those out at this moment, will you tell the Jury what the factors are which prompt you to conclude that there is a loss in value of \$400 per acre after, as compared to before the taking?

A. I think I gave you this morning the disruption of irrigation. The loss of tail waters. The relocation of sump and pump. The levelling for gravity flowing. [195]

\* \* \*

### ROBERT L. BLAKE

called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. LaPrade:

\* \* \*

Q. What is your occupation?

A. Appraiser; valuation engineer.

Q. Where did you receive your education?

A. University of Arizona.

Q. What degree did you receive?

A. Bachelor of Science in Civil Engineering.

Q. When did you graduate? A. 1937.

(Testimony of Robert L. Blake.)

Q. Have you been in the appraising business ever since then? [196]

A. No, I was with the United States Geological Survey for some years.

In the United States Navy for three years. And in the appraisal business since 1945.

Q. Where?

A. Here in Phoenix, Arizona, and all over the state.

\* \* \*

Q. And have you had occasion to appraise real estate which is suitable for either farming or subdivision purposes?

A. Yes, I would say virtually all purposes.

Q. And have you had occasion to specifically appraise and examine lands in large acreage blocks for purposes of future subdivisions? A. Yes.

Q. Have you had occasion to observe whether or not in this Valley at any given point of time, land ceases to be valuable for one purpose, and increases in value for a different purpose? [197]

\* \* \*

Q. Has or not it been a common occurrence in this Valley in recent years for farm land to cease having value as such, and to have an increment for other purposes?

A. Many many acres have been in that category.

Q. Do you know in which direction the general population movement is headed in this city?

A. Generally north, northeast, northwest, east and west.

(Testimony of Robert L. Blake.)

Mostly it eliminates the south, more so than any other direction. The other directions are much more predominant.

The most recent acceleration of move has been to the northwest, the Deer Valley area, and the John Long developments have all indicated that in the next few years development is going to be primarily to the west.

We also have some plans for a direct coast—Phoenix to the Coast highway that will take Van Buren as [198] its general route.

That is not definite as yet, but it has been thought of, and these things are all developing to the west.

Q. How do you go about appraising a given plot or block of acreage as to its highest and best use?

A. Well, in determining, in arriving at a conclusion as to the highest and best use of a piece of property in connection with appraising it, the process amounts to an examination of not only the property in question, but the general area, and also such things as zoning, possible deed restrictions, various things of that nature that would affect what a piece of property can both legally and logically be put to use, for what purpose is there a demand.

You simply have to go out and study the area and determine what possible uses there may be now, or in the immediate future, for this land, and decide on which one will be the highest value to that land.

Therefore, when you decide in your own mind, then you will consider that the highest and best use.

Q. And have you been employed in this case

(Testimony of Robert L. Blake.)

heretofore to render an appraisal, and your opinion of the market value of Tract H-801, in this action?

A. Yes, I have.

Q. And specifically what did you do with respect to arriving at an appraisal of value in this regard? [199]

A. In the case of the Baker-Roach property, I was first employed in 1957. I forget the month. Sometime during the year 1957.

And my first step was to go out and look at the land itself, and also the general area involved.

Of course, I am familiar with it in a general way, without any specific inspection.

I have been here practically all my life, and I have known that area for many many years, but in connection with this specific appraisal, there was an on-the-spot complete and thorough investigation made of the entire area in and about Glendale Avenue and Dysart Road, including to the south, north, the Luke Field area, and east to the Glendale area.

The next step after the thorough physical inspection is an inspection of the records to try and determine if there are sales in this area, which by point of time, and type, and size might be comparable to this land.

Q. Did you make that inspection?

A. Yes, I did. I made an exhaustive study.

Q. And what did you find?

A. I found no sales in this area of anything that I considered comparable. [200]

(Testimony of Robert L. Blake.)

This location, it is obvious, is on the main route of travel to Luke Field. It is near it. It is handy. Yet it is far enough away that it is away from the principal noise nuisance of Luke Field.

It fronts Glendale Road, Glendale Avenue, which is, as I say, the obvious main access road to Luke Field. It also fronts on Dysart Road. In other words, it is at a mile corner.

It is on the side of Luke Field toward development, rather than away from it. The terrain is, well, it is cultivated. It is level, good, for the most part good, level land. It is in cultivation.

All of these things would have to apply to any other land in order for it to be comparable.

Now, the only possible ones, I don't think there is much question about it, would be maybe these four corners right here (indicating).

Q. Where is that, sir?

A. The southwest corner of Dysart Road and Glendale Avenue. The southeast corner of Dysart Road and Glendale [201] Avenue, and the northeast corner of Dysart Road and Glendale Avenue.

Q. What is the topography of this southeast corner of Dysart Road and Glendale?

A. I wasn't quite through, Mr. LaPrade.

Q. Pardon me.

A. These are the only possible comparable pieces of land.

None of them, however, is completely cultivated. None of them is as level right to start with. So on that basis alone, they are not entirely comparable.

(Testimony of Robert L. Blake.)

In addition to that, none of those have sold. So the study of sales in the area turned up quite a few, but none of them were any good.

They were different kind of land, located in a different relative position, a different type of terrain, not cultivated, various things. Something made every one of them, every piece of land that I found in the possibly 10-mile radius—I don't think I went that far, say, 10 miles diameter, 5-mile radius—every one of them had some element that would not measure up to this land. [202]

\* \* \*

They were all different kind of land. There were some sales during that period, but they were all different kinds of land.

Q. With respect to the subdivision south of Glendale Avenue on the east side of Litchfield Road circled in red on the left center of Government's Exhibit 1 in evidence, did you have an opportunity to examine that situation, Mr. Blake?

A. Mr. LaPrade, if I may say, I don't believe I finished answering your last question.

You asked me what I did, and I wasn't through with what I did. I don't want to get confused here.

Q. I will strike my question, and you proceed.

A. That wasn't all I did was just arrive at this point of investigating the sales.

After that, I then investigated the possibility of finding sales of similar lands for a similar purpose, in a slightly different area.

(Testimony of Robert L. Blake.)

In other words, this piece of land I consider in a strategically located spot, in an area where housing is needed, as evidenced by my investigations as to the number of personnel living off the base, the locations where I actually found them living being so remote from their place of occupation, I felt that there was a very definite need for housing in this area, and feel that this is the best [203] place to put it.

Now, then, this resolves itself to this set of circumstances.

We have a piece of land fringing an area that needs development. I therefore considered that if I could find some lands in the same situation market-wise that were fringing another area that is already developed, and in demand for development, where housing is needed, if I could find lands like that, even though they weren't in the immediate vicinity, then that would give me an indication of what this land would bring in the market.

On the other hand, just outside Luke Air Force Base, what would a developer be willing to pay for land—I think it is indicated by the testimony that some land may be six or seven miles away, what it might have sold for in the market to a developer with a market at hand.

He is in the fringe of development, and it is growing, his land is in demand, so on that basis I think that comparable lands are not in this immediate vicinity, but are on the fringe of growth.

I therefore studied some of these areas and found

(Testimony of Robert L. Blake.)

an indication of values of lands ready for development, that I used in basing my opinion of this land. [204]

\* \* \*

Q. Do you have an opinion of the highest and best use to which Tract H-801 could have been put on March 11, 1957? A. Yes, I do.

Q. And what is that opinion?

A. In my opinion, the land could best be used as a residential development for the acreage back of the main streets.

And commercial development on the corner of Dysart—the northwest corner of Dysart Road and Glendale Avenue, and a combination professional multiple-dwelling development along the Glendale Road frontage, what is commonly referred to as R-5 property.

Q. That is a reference to zoning?

A. That is a zoning reference which indicates it can be used for professional offices, or multiple dwellings.

Q. In making an appraisal as to what a willing buyer would pay a willing seller, do you have an opinion as to whether the present zoning of a part, or all of the property in question, would be a factor that a buyer would consider?

A. Yes, it would be. [205]

\* \* \*

Q. Do you have an opinion as to whether the

(Testimony of Robert L. Blake.)

demand for housing in the immediate vicinity of Tract H-801 was sufficient on March 11, 1957, to have an effect on the actual market value of the land?       A. Yes, I do have an opinion.

Q. What is that opinion?

A. In my opinion, as revealed by my studies in connection with this appraisal, I feel that the demand, the indicated demand for housing in this area would warrant an immediate development of this quarter section of land.

Q. And you were, of course, aware of the Government's Wherry Housing and Capehart Housing projects that under the law the Government can resort to if they need it?       A. Yes, sir.

Q. Generally speaking, I mean you are familiar with that type of projects?

A. Yes, sir, I am.

Q. And do you have an opinion as to whether that type of project would be needed if it was first developed by the land owners?

A. I do not think so. I think it is obvious the only reason any development would go in there was because it was needed, and if private capital has not done it, then these [206] various methods have been provided by law to take care of housing.

Q. And do you know when Luke Field became a permanent facility?

A. I believe in April of 1956.

Q. That was approximately a year before this action was filed by the Government?       A. Yes.

Q. And do you know whether it became generally

(Testimony of Robert L. Blake.)

known about the time the Government made the air base a permanent facility, that this project would be the next step?

A. As I recall, it was general knowledge very shortly thereafter.

Q. So considering your experience and your background in all of the matters to which you have testified today, Mr. Blake, do you have an opinion of the market value of the Roach-Baker ranch, that is, all of their holdings, on March 11, 1957?

A. Yes, I do.

Q. What is that opinion? Will you write it on the blackboard, sir?           A. \$724,300.

Q. \$724,300. Do you have an opinion of the value, in terms of fair market value, of the remainder of the ranch after the taking? [207]

A. Yes, I do.

Q. What is that, sir?           A. \$492,000.

\* \* \*

Q. What is the difference in those two figures?

A. \$232,300. [208]

\* \* \*

A. That represents for the 132.4 acres taken \$1,750 per acre.

Each of the above two figures are predicated upon various amounts for the various portions of this land which I don't consider all the same.

I don't think that all that land is exactly the same.

(Testimony of Robert L. Blake.)

Q. In arriving at your "after" value, to wit, 492,000, have you made a deduction for any severance damages?      A. No, sir. I have not.

I think that the highest and best use of this land remains the same before and after this taking, and this does not involve farming.

I think that all of this land has a value that can be predicated on a higher usage than farming. And those potentials, and those elements of value remain there [209] regardless of who develops this 160 acres, the fringe land around it remains the same. It is still next to a development, and there is no difference when considering the highest and best use.

\* \* \*

Q. Assuming for the purpose of argument that this farm is a farm, and was on the date of taking, and had no value for any purpose other than farming, and omitting any other increment or element of value from this problem, would you have an opinion as to whether the remaining land after the taking would have a per acre market value, market valuation, the same as before the taking?

A. Yes, I have such an opinion.

Q. What is that opinion?

A. In my opinion, the remaining acreage would not have as high a unit value as farm land after this taking, for the purpose intended.

Q. Why is that? [210]

A. Actually, the primary reason is the undoubted

(Testimony of Robert L. Blake.)

elimination of the most economical method of crop dusting, which is by airplanes.

It simply would not be feasible. I don't think anyone would even want to go in there with airplanes flying low, and poison dust, and so forth, even if the law allowed it.

I don't believe they would want to go in and dust by that method any more when they are right next to a school and a housing project.

Q. Then it is your opinion that a prospective purchaser would weigh that matter heavily?

A. Yes, I think that the only remaining value then goes to a bargain purchase.

\* \* \*

Mr. Eubank: May the record show that the Government has moved the Court for a Jury view of the condemned real property and the property surrounding the taking, and that counsel for the Defendant had no objection, and that the Court granted the motion for one o'clock tomorrow afternoon. [211]

\* \* \*

### Cross-Examination

By Mr. Eubank: [213]

\* \* \*

Q. Now, you stated that there were no, in your opinion, no comparable sales in the vicinity of the condemned property?

A. Yes.

(Testimony of Robert L. Blake.)

Q. And I assume by that that you did not feel that the sales up in the Adaman Mutual, or in the Adaman Water District were comparable?

A. I consider them comparable in no way at all. [214]

\* \* \*

Q. So when we in appraisal work, or in appraising talk of comparable sales, we are talking in effect of guides, isn't that correct, guides to market?

A. That is certainly true. However——

Q. That's all I asked you.

A. This needs some explanation, if I may.

Q. Well, Mr. LaPrade can ask you.

A. This is not a complete answer.

Mr. LaPrade: I would like to have him explain it, your Honor.

The Court: Go ahead.

The Witness: The fact that your properties are not exactly comparable is probably true in most cases. However, using the comparable sales method does not intend to use a resolving of differences method.

You must guard against resolving differences, rather than drawing comparisons. You must draw comparisons and not resolve differences.

That is a basic concept of the comparable sales approach, and you must always guard against that resolving [215] of differences, rather than drawing a comparison.

Q. (By Mr. Eubank): So in your opinion that

(Testimony of Robert L. Blake.)

is what you would have been doing if you had taken into consideration any of the Adaman transactions or sales behind Luke Field, over to the west?

A. Yes.

Q. And also, I suppose, any sales closer in to Glendale?      A. Not necessarily.

Q. My understanding is that you did consider land that you call similar land, the sale of similar lands in a similarly affected area?

A. Much more closely comparable.

Q. As far away as six or seven miles away?

A. Correct.

Q. Now, I take it that you agree with Mr. Cavanagh as to the market for the multiple housing and commercial properties or valuations that you have given these lands, in that that lies on the Luke Air Force Base, is that correct?      A. Yes.

Q. That is one of the large factors, evidently, in your mind, that makes this area in your opinion a residential and commercial area?

A. The fact of Luke Field being there?

Q. Yes. [216]

\* \* \*

### Redirect Examination

By Mr. LaPrade:

\* \* \*

Q. (By Mr. LaPrade): Mr. Blake, on cross-examination you referred to the term of "resolving of differences," rather than making comparisons.

(Testimony of Robert L. Blake.)

Will you elaborate on that and explain precisely what you mean by those phrases to the Jury?

A. Well, I think that they are pretty much self-explanatory.

It is, as I say, a basic concept, and is [217] spelled out very carefully in any appraisal work, that the comparable sales approach is, if applicable, the best approach that can be made. But that the appraiser must always guard against going out and finding a piece of property that is not truly comparable, and then in his own mind saying, perhaps, well, this isn't the same, but this one is probably twice as good, and then doubling that value in arriving at it. This is not the way to use the comparable sales approach.

You must find lands that in virtually every test, in nearly every measure is comparable.

Now, one or two things are going to be a little different, or somewhat different in every case, but you must draw a close comparison, and not view something that is entirely or completely different, and resolve those differences. This is not the method at all.

Q. Then I take it in examining other sales in the vicinity of Tract H-801, it was your opinion that to call them comparable, you would have had to resolve differences, rather than make comparisons? A. Yes, sir.

Q. And that was your main reason for rejecting them as comparable sales? A. Yes, sir. [218]

(Testimony of Robert L. Blake.)

Recross-Examination

By Mr. Eubank:

Q. Just one question. It is my understanding, then, you did not use the comparable sales approach to valuation?

A. Yes, I did. I think I stated that I did.

Q. You said you used the similar sales, sales of similar land in similar area approach?

A. This is what I call closely comparable.

Q. That would be your definition of comparable sales approach? A. That is right.

Q. Even though the property is six or seven miles away?

A. That is the one difference. The other factors are all quite similar, and I think these are similar enough to use these lands as a guide. [219]

\* \* \*

HERBERT V. ATHA

called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. LaPrade:

Q. Will you state your name, please, sir?

A. Herbert V. Atha.

Q. Where do you live, Mr. Atha?

A. Litchfield Park, Arizona.

Q. By whom are you employed?

(Testimony of Herbert V. Atha.)

A. J. G. Boswell Company.

Q. What is the business of J. G. Boswell Company?

A. Oh, we farm, and we loan money on crops, and we gin cotton. We have oil mills, and we feed cattle.

Q. Where are the J. G. Boswell operations located in this county?

A. We have got about ten gins. I will have to count them up.

Q. Where are they generally located? Not the gins, sir, but the farming operations?

A. The farming operations are at Marinette Ranch, which we own, northwest of Peoria, and another ranch called the Santa Fe Ranch. [220]

Q. What is the total acreage of the J. G. Boswell operations?                      A. About 16,000.

Q. What is your purpose with the company?

A. I am the manager.

Q. You are the general manager of J. G. Boswell Company?                      A. For Arizona.

Q. And for how long have you been employed by them?                      A. About 32 years.

Q. What are the different positions you have had?

A. I started in charge of the gins and oil mills. Then I got in the farming. Then I got in the money loans. Then I finally tumbled into being manager.

Q. Does the J. G. Boswell Company engage in farm loans for farmers?                      A. Yes.

Q. Is that for the purpose of growing crops?

(Testimony of Herbert V. Atha.)

A. Growing crops, and we make capital loans to help people buy farms.

Q. In that regard, do you secure your loans by mortgages?

A. Yes, we usually take a second mortgage.

Q. In connection with the cotton ginning operations of your firm, are you associated with farmers generally in the valley?      A. Yes. [221]

Q. And in fact you gin their cotton?

A. That is right.

Q. And you loan them the money to grow their crops with?      A. That is right.

Q. That is, as a matter of fact, the general method of financing farming operations in this day and age, is it not?      A. That is right.

Q. Particularly with respect to cotton farming?

A. That is right.

Q. Are you engaged in farming personally?

A. Well, I have a place, but I have to rent it out. You can't farm for yourself and work for the Boswell Company.

Q. Where is your farm located?

A. My southwest corner is about a half a mile from Baker and Roach's northeast corner.

Q. Referring to Government's Exhibit 1 in evidence, this aerial photograph, then your property would be north and east of their property?

A. Yes. (Indicating on map.)

Q. Would you please speak louder?

A. I say, I am almost in the river, probably right

(Testimony of Herbert V. Atha.)

up. That's it. I am just a half-mile from this corner on Northern Avenue.

Q. You are half a mile north of Northern [222] Avenue?

A. No, I am on Northern Avenue. My south line is Northern Avenue, and I am half a mile east.

\* \* \*

Q. (By Mr. LaPrade): Would you make a circle there, and on up to where the figure 202 is on the map?

\* \* \*

Q. How long have you had that piece of property?

A. I can't remember. I have had it for about 15 years.

Q. Are you familiar with the Roach-Baker property? A. Yes, I am.

Q. Have you been on that land?

A. Oh, my, yes.

Q. How long have you been acquainted with that property? [223]

A. Well, long before they had it. I guess I have gone by it maybe three times a week for the last 15, 16 years, because I go that way to Marinette.

Q. In your experience with the Boswell Company, have you had occasion to analyze farms with respect to their general layout, and their productivity, and the ins and outs of the farming business?

A. Yes.

Q. Tell us what you must consider in deter-

(Testimony of Herbert V. Atha.)

mining whether to loan money for the purpose of a farmer purchasing another farm.

A. The first thing we consider when we make loans is how we are going to get the money back, so the main point on that is how much money will the farm make as a farm.

Q. You don't know anything about the subdivision business, do you?      A. No, not a thing.

Q. Mr. Atha, assuming for the purpose of argument, that the Roach-Baker properties have no value for any purpose other than farming, as contended here by the Government, and make that assumption with respect to my following series of questions, if you will:

Do you know how many acres of land were planted in cotton in the year 1955?

A. I have got it in here. I just asked the girl in the [224] office to give me their production.

Q. Backing up a little bit, Mr. Atha, by way of explanation, do the Roach-Baker farm, or do they gin their cotton with you?

A. Yes, they gin with us.

Q. I assume, then, that your company has a means of keeping records with respect to how much cotton you gin for them?      A. Yes.

Q. And eventually you put it into bales?

A. Into bales.

Q. And have you made inquiry, or made yourself familiar with their cotton production in the past three crop years?      A. Yes.

Q. Let us start with the year 1955.

(Testimony of Herbert V. Atha.)

A. 1955-1956, they got 279 bales off of 90 acres.

Q. State that once more.

A. 279 bales off of 90 acres.

Q. And in 1956?

A. 1956-57 they got 332 off of a hundred acres.

Q. The next year?

A. 1957-1958, 312 off 100 acres.

Q. And those are the figures which your company has in its records? [225] A. Yes.

Q. Are you familiar with the nature of the fertility of the soil on the Roach-Baker farm?

A. Yes.

Q. And what is that situation?

A. I would say the farm is always one of the best farms out there, the most productive in the way we look at it.

We appraise for what a farm will make, how much money it will make.

Q. And has this been a productive farm?

A. This has been a very productive farm.

Q. Generally speaking, by the figures you have given, it would indicate an average yield of three bales per acre, would it not?

A. Yes. It is a little over.

Q. How does that rate generally with farming?

A. That rates way up, within the top four or five or six.

Q. Are you familiar with the water conditions on the Roach-Baker farm?

A. Yes, quite familiar.

Q. Have you been on it and looked at it?

(Testimony of Herbert V. Atha.)

A. Yes.

Q. Do you know how they irrigate it? [226]

A. Yes.

Q. Are you familiar with the sump, and the manner in which they use it?

\* \* \*

Q. \* \* \* With regard to the water supply on this property, and considering your knowledge of the farming practices on that farm, and the crops which they have put in over the [227] years, do you have an opinion as to whether there has been sufficient water? A. Yes.

Q. For the purposes?

A. Yes. In my opinion there has been plenty of water.

If there hadn't been, they have got one well out there, I think 900 feet deep—my figures are approximate—lifting water from about 250 feet, and the wells in that general locality run about 30 to 50 gallons per foot of drawdown, so if they wanted another 100 inches of water, if it was 50 gallons per foot, why, another 20 feet would give you another 100 gallons of water, or another 1000 gallons of water, as a matter of fact.

Q. Do you know approximately how much of the acreage on the east side of Dysart Road as of March 1957, they were irrigating from the tail water from the sump?

A. Not accurately. I think they were irrigating about a hundred acres.

(Testimony of Herbert V. Atha.)

Q. If it was the testimony of Mr. Baker that it was 80 acres, you would accept it?

A. I would accept it. I certainly would. [228]

\* \* \*

Q. Are you familiar with the manner in which they have to irrigate the remainder of the ranch, subsequent to the Government's taking Tract H-801?

A. They have got to get this water over [229] here.

\* \* \*

Q. Now, explain to the Jury the result of the taking of the land, with respect to the tail water situation.

A. In other words, the two sections will take care of about a half section, and it costs about 50 cents an acre-foot to pump up sump water.

It probably costs at least 5, 6 dollars to pump it. If they were using 5 and 6 dollar water on this, and catching this tail water and getting water for 50 cents to irrigate this spot here, and now they only get half the tail water, so they have to use more 5 dollar water than they have before——

Q. The result being that their water is costing more per acre than it did before?

A. It is costing more per acre than it did before.

Q. At present, then, they would be pumping direct from their pumps down into the sump? [230]

(Testimony of Herbert V. Atha.)

A. Direct from the pumps into the sump.

Q. Do you know whether there is sufficient tail water now going into the sump to irrigate the 80 acres on the east side of Dysart?

A. Yes, I am sure there is.

Q. All tail water?

A. I am sure it is all tail water. That should handle the whole 80 acres.

Q. The Government has taken the southeast quarter of that section?      A. Yes.

Q. And that much less land is irrigated?

A. Yes.

Q. So they have that much less tail water?

A. Yes.

Q. Have you familiarized yourself as to whether now there is sufficient tail water to irrigate the east 80?

A. No, there would only be half enough. If there was enough with the 320, and they got another 60, there's going to be only half enough tail water. [231]

\* \* \*

Q. To irrigate the entire 120 from north to south, they would have to do considerable leveling?

A. They would have to knock the hump off, or come around it some way. Water won't run over a hill.

Q. That costs money?

A. That costs money.

(Testimony of Herbert V. Atha.)

Q. How much money does it cost to level land?

A. There is such a wide variety. Land that will irrigate in furrows, a lot of it, and it looks pretty good, you can spend a hundred dollars right off levelling for vegetables.

Q. Mr. Atha, considering your experience in the farm-loan business, and as a farmer, and as a neighbor of the Roach-Baker land, personally, do you have an opinion as to the market value as of March 11, 1957, of the entire Roach-Baker land?

A. I would say it would pay off \$900 an acre, they could get \$900 an acre for it, in relation to other lands.

Q. That is predicated your values on use as a farm only?

A. As a farm only, and what that land will produce.

Q. Assuming there were 480 net acres. It would be 480 times the \$900, is that your testimony?

A. Yes. [232]

\* \* \*

Q. Mr. Atha, do you have an opinion of the market value of the remainder of the farm after the taking?

A. I would say the market value would be probably about \$600.

Personally, I would have to have a bargain price to buy it. [233]

Q. Why is that? Explain to the Jury your

(Testimony of Herbert V. Atha.)

reasons why you have deducted \$300 an acre on the balance of the farm, as a farm?

A. Principally on the dusting.

Q. Explain that, sir.

A. Well, you can't raise your money crops without airplane dusting. You can raise a crop, but you can't raise a good crop, such as cotton and vegetables.

You can dust cotton until it gets to a certain height with a ground duster. But in July and August when you need the dust, you've got to use an airplane, and the dust you are getting now, they are just getting so poisonous that I really think we are all more afraid of them than we will admit.

If they are handled carefully, they are perfectly all right. If a man dusts with parathion, he doesn't want to let anyone go in the field for about 48 hours, and I have friends that dust with parathion and go in in 10 or 12 hours. And with others you are getting the same thing, and every year they are getting more poisonous, and a fellow would be absolutely afraid to dust with those poisons which are the ones you use, with a housing development right next to you.

We surround Youngtown. We have that trouble. We are on three sides of them on our Marinette [234] Ranch.

Q. Where is Youngtown?

A. It is right off of Grand Avenue.

Q. How far out?

A. About 17 miles out.

Q. North and west of Luke Field.

(Testimony of Herbert V. Atha.)

A. It is north and east of Luke Field.

Q. How far from Luke Field?

A. About five or six miles.

Q. Is that a residential subdivision?

A. Yes. It is a big subdivision. They have about 160 acres.

Q. Right out in the middle of the sticks?

A. No, it is not out in the middle of the sticks. It is a nice place. They are doing a wonderful job.

Q. That is where your Marinette Ranch is?

A. Yes, we have it blocked off on three sides, and we are very careful with the dust there.

In fact, we don't have much cotton near that subdivision. We have a little on the north side of it this year, and we don't dust with airplanes there at all, just on the likelihood that something could happen.

Q. What other reasons do you have for knocking off \$300 an acre on the remainder of the land after taking?

A. The water situation isn't nearly as good.

Q. In what respect? [235]

A. You have got to work your water all around. You don't have your waste water to use, which runs into quite a little money.

Moving the machinery of the farm on the odd pieces of land that are separated, while it doesn't look like much, in actual operation it amounts to quite a lot of money.

Q. Will you refer to Defendants' Exhibit E in evidence, and point out to the Jury precisely what you mean by the moving of equipment around.

(Testimony of Herbert V. Atha.)

A. Well, they used to come down here. It was their farm land, and they could farm this, and get over here.

Now this is all going to be subdivision. When you move your machinery, you have to move it down this way, and down that way. You can't get your crops in rotation, so that your working tools come right along down with your water.

We had one customer that had a place where he had to move about half a mile, and he had to give it up. He said he was tired moving his trucks around.

Q. Mr. Atha, in your opinion, is the remaining farm land, assuming this is just a farm, before and after taking, a compact economical farming operation? A. No, I wouldn't say it was.

Q. Would that have an effect on its after market value? [236]

A. I think the effect would be, with the water that you have on that piece below the road, unless they gave you a vested right in the well, which I shouldn't think anybody would do in this country, short of water, there would be no sale for that. It is because without water it is no good, except it would be good for a subdivision, or something like that.

The piece on the east side would be a lot easier to sell in conjunction with the land that was left than the piece across the road.

Q. In multiplying out your figures in the testimony on values, I assume it is your testimony that

(Testimony of Herbert V. Atha.)

the 480 acres before the taking at \$900 an acre would be \$432,000, if my figures are accurate, and after, 600 times approximately 356 acres, would be \$213,600? Is that your opinion of the after value, sir?       A. Yes.

Q. And the difference being the representative value of the land that was taken by the Government?

A. That is right.

Q. Which would be a figure of \$218,400?

A. That would be about it. [237]

\* \* \*

Q. \* \* \* The remainder of the ranch after the Government's taking you have testified has a value of an average of 300 per acre less.

A. Less, yes.

Q. And that, sir, we refer to as severance damages, incidentally?       A. Yes.

Q. And in that you have considered the crop dusting problem and the water problem?

Now, with respect to the market for the property, if there was a market for it, do you have an opinion as [238] to whether it would be marketable as a farm in its resulting condition?

A. Yes, it would be, that is where I say I think you could sell it for \$600 an acre, as a farm, the land that is left.

Q. Have you had an opportunity to examine other farms, other farm lands in the area with respect to their sales value?

A. From time to time.

(Testimony of Herbert V. Atha.)

Q. Are you generally familiar with the market value of farms out in that area?

A. Mostly by hearsay. I would say I generally am.

Q. It is your business to be informed in that regard, isn't it?        A. It is.

Q. And the farmers advise with the lending agencies, because when they go to sell or buy, they need your assistance? Is that how you familiarize yourself with that?

A. They usually have their price, and they come in and ask for money. Then we see what we think about it. [239]

\* \* \*

### ARTHUR E. BAKER

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

### Direct Examination

By Mr. LaPrade: [248]

\* \* \*

Q. You may be seated, sir. How much acreage in the east plat of ground, on the east side of Dysert did you formerly irrigate with the use of tail water? [250]

\* \* \*

A. There was 116 acres east of Dysert Road, and we irrigated approximately 80 acres. [251]

(Testimony of Arthur E. Baker.)

\* \* \*

Q. Mr. Baker, subsequent to the Government's taking Tract H-801, you had been farming this land? A. Yes.

Q. What has been your experience with respect to the availability of tail water for use on the 80 acres on the east side of Dysert Road? [252]

A. The amount?

Q. Yes, sir.

A. Well, at all times we have had enough water through this point, strictly from the use of tail water. These four fields here are in alfalfa.

Q. Do you have the same amount of tail water now that you had before? A. No.

Q. How has that affected your farming operation?

A. We have about enough tail water to water from here south, approximately 40 acres.

Q. As compared to what you had before of 80 acres?

A. Up to here, we watered all of this. Now, this past summer we watered this. Of course, we watered it all.

Q. How have you made up for the loss of tail water?

A. These two pumps here now come down this concrete ditch here, and the Government replaced the center ditch with this one here that shows here. It doesn't show much of a ditch here, but it is a large ditch. The water flows down here and comes to

(Testimony of Arthur E. Baker.)

here and reaches this point and comes out to our sump.

Q. In other words, you are pumping water direct to the sump? A. Yes.

Q. And pumping it out of the sump and using it on [253] approximately 40 acres on the east side of Dysert Road?

A. When we pump, we water the whole 80 acres; but unless we pump, we only have enough available ditch water for this piece here.

Q. Does it cost you more or less now per acre foot of water to irrigate your fields?

A. The cost of water is determined by your electricity bill and your maintenance on your pump and your initial investment of your pump and well; and we figure that loss in the neighborhood of 6 or \$7 an acre foot to pump an acre foot of water. This water that goes into this sump by gravity flow costs approximately fifty cents an acre foot to pump it back out because of the lift involved.

Q. Then do you have as economic an operation now as you had before the taking? A. No.

Q. Have you ever had occasion to do anything with respect to your land, the zoning of it?

A. Yes, we had two corners of it zoned.

Q. When did you do that?

A. That was in March—I don't recall the exact date, but March, 1956.

Q. What was the occasion for your rezoning those corners?

A. Well, of course, there is always rumors con-

(Testimony of Arthur E. Baker.)

cerning [254] an air base; and there was rumors concerning this, that it would become a permanent base. I myself had spent a few years in the Air Force and at numerous bases I had been based at there was activity around these bases; and, naturally, I assumed that if this became a permanent base, there would be increased activity around it; and we decided to zone it.

Q. For what purpose?

A. For commercial zoning, mostly, to start with. These two corners, we thought we would have to start them before we could go very far with the rest of it; and we thought either possibly bowling alleys or drugstores or filling stations. We had been contacted by a couple of grocery operators wanting either to lease it outright, or for us to build and they would lease the building. [255]

\* \* \*

Q. Well, strike the question, please. Mr. Baker, would you explain to the jury the difference, if any there is, between the manner in which you must conduct your operation now after the taking as compared to the manner in which you conducted your operation before the taking?

Mr. Eubank: I object to that, your Honor. The loss to the individual is not—any personal loss is not an element of market value.

The Court: No, that has to do with how they operate the land. You may answer.

The Witness: Well, you can see that by taking

(Testimony of Arthur E. Baker.)

this part of it away, we had a graveled road about the size of this ditch all the way up and down this mile.

Q. (By Mr. LaPrade): That is in the center of the east half of Section 3?

A. That is correct. Working these fields, we could [256] cross from here and get into these two fields. Now, because of the change we can't get through here any more; so we have to come over here and come down back of the road a mile, and back a quarter of a mile on Glendale Avenue where you are risking life and limb with a piece of equipment. It is very difficult to farm this piece below the road here. We have also an investment in machinery that is qualified to take care of that much property.

Mr. Eubank: I object to that, your Honor; that obviously is personal loss and not relevant.

The Court: You cannot operate a farm without machinery, can you?

Mr. Eubank: That's right, but he can rent machinery.

Q. (By Mr. LaPrade): Go ahead, Mr. Baker.

A. To pay for machinery you have to operate it. You have to keep it rolling. You have to have land, real estate, to operate it on; and we were in the vegetable business on this place as well as cotton, cattle, alfalfa and grain.

Q. Is this land suitable for vegetable farming as well?

(Testimony of Arthur E. Baker.)

A. In 1942 they raised vegetables on it until we bought it, so I assume it is fit for vegetables.

Q. You have not yourself farmed it in vegetables?

A. Yes, we have raised potatoes and lettuce, and we do have a vineyard on 40 acres of it.

Q. Where did you plant your cotton before the taking? [257]

\* \* \*

Q. Mr. Hanson testified for the Government that in his opinion you do and did not have sufficient water on this farm to conduct a two-crop operation. Can you tell the jury whether or not you have had sufficient water with which to farm this farm?

A. Well, I don't know where Mr. Hanson got his information. He certainly didn't get it from me, and he certainly [258] didn't get it from the Hanson Pump and Machine Company, but he expected the jury to believe that he did.

Mr. Eubank: Now, your Honor, I think that is completely improper.

The Court: No, you just tell what you know about it.

Mr. Eubank: It is certainly not responsive.

The Witness: There is plenty of water for a double crop, and we have double-cropped it ever since we had it.

Q. (By Mr. LaPrade): Have you ever been short of water? A. No.

Q. Are the wells in such condition that you can extract more water from them now if you need it?

(Testimony of Arthur E. Baker.)

A. Certainly.

Q. By doing what?

A. We have a well that was drilled there in 1956. It was contracted for in the summer of 1956. It is 900 feet deep with a 20-inch casing in it; and we left our old pump and motor on it because it was sufficient water for what we needed, especially for this after the land was taken; and at any time we need more water, according to the Hanson Pump Company, it is there, 2,800 gallons from this one well alone.

Q. Mr. Baker, as the owner, or co-owner of this property and defendant in this case, and considering your experience as a farmer and as a man who lives out there for years adjacent to these fields, do you have an opinion as to [259] what the highest and best use to which you could have devoted Tract H-801 as of March 11, 1957?

A. Well, in view of the fact that the base became permanent, I think that subdivision and commercial property along Glendale Avenue would certainly be the highest and best use of it. Possibly farm land on the balance of it until time warrants a change. I might add, if it is permissible, that this—you have asked the disadvantages of losing this; and we have to keep this machinery busy that we spoke of, and we had to go west of us to lease more land for our vegetable operation, which we are now doing and have been doing since this deal started.

Q. Mr. Baker, do you have an opinion as to the

(Testimony of Arthur E. Baker.)

market value of your farm as of the date the Government took this one piece?

A. Yes, I have an opinion. Of course, it may be a little bit biased; but I have it. I think that the property along Glendale Avenue, this 132.4 acres that they took, we will take that 32.4 acres, naturally, right along Glendale Avenue; and I feel that it is worth \$3,500 an acre. The balance of that, which is 100 acres which will have to lie behind it to this line here, is worth \$1,800 an acre.

Q. Have you totaled that up?

A. Yes. The 32.4 comes to \$113,400; and the 100 acres at \$1,800 comes to \$180,000. [260]

Q. What is the total figure? A. \$293,400.

Q. That would be your opinion of the market value of Tract H-801 which the Government has taken? A. Yes.

Q. Mr. Baker, assuming that the experts who have testified for the defense and yourself are incorrect, for the purpose of argument, and saying that this land had no value for any purpose other than as farm land, and omit Luke Field as a factor, do you have an opinion as to whether or not your remainder land will have suffered any damage in the market, that is, by virtue of the Government taking H-801? A. Naturally.

Q. Upon what do you base that statement?

A. Well, a number of reasons. First, the resale value of it has been pretty well butchered up by cutting the property into different parcels as it is. There is more difficulty there in farming it, moving

(Testimony of Arthur E. Baker.)

machinery; and your water situation is a little bit different, a little bit more difficult to control. The care of the crops that we can continue to farm on the remaining parcel, your production will naturally be very limited there because of the fact that it would be impossible to dust cotton after the middle of June by anything except an airplane.

Q. That is because of the rate of growth of the cotton [261] crop?

A. Yes. You can dust it with a ground machine until it gets too big, and you can't get into it. I guess it will be objected to, but Mr. Hanson said it could be done.

Mr. Eubank: I object to your reference to Mr. Hanson, sir.

Q. (By Mr. LaPrade): Just answer my question, Mr. Baker. Continue on that line of reason.

A. Well, cotton cannot be dusted if it gets to any size, with a ground machine unless you skip-row. We don't believe in that. We have sufficient water without it, and our production is high enough that we don't have to skip-row. This, it appears, could be done with a ground machine; but when your ground is wet, after it is irrigated, it is a little rough to get in there with a ground machine; so you put it on with an airplane.

(Testimony of Arthur E. Baker.)

Cross-Examination

By Mr. Eubank: [262]

\* \* \*

Q. No, that is fine. What type of dust do you use on your cotton crop?

A. Well, numerous types.

Q. Well, what is the one that you used before March 11, 1957?

A. You mean the season before?

Q. Yes.

A. Well, we used toxaphene, DDT, parathion, malathion, dieldrin and benzahexachloride.

Q. You use all of those? [269]

A. They are all available, and I would say during the season we probably used at least three of those.

Q. That is the question I asked you, what did you use?

A. We used parathion, malathion and dieldrin. [270]

\* \* \*

VERN A. ENGLEHORN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Vern A. Englehorn?

A. That's right.

(Testimony of Vern A. Englehorn.)

Q. You are a partner in the Western Farm Management Company here in Phoenix, Arizona?

A. Yes.

Q. What is the business of the Western Farm Management Company?

A. Western Farm Management Company manages farms and ranches throughout this area for absentee owners and investors, and they make appraisals on farms and ranches and also city property. The demand for appraisals has been such that we cover pretty much the Rocky Mountain west and also California. We are the loan correspondents for two large life insurance companies making farm and ranch loans. Those companies are Northwestern Mutual Life Insurance Company and Connecticut General Life Insurance Company, located in Hartford, Connecticut. We also do a certain amount of what we call farm or ranch management and planning in which we set up the program for the owner, and the owner uses it as a guide in his operation. We do that work for private people, and we also have done [276] considerable management planning on some of the Indian reservations, including the Mescalero Apaches (?). The Indian tribes now want good management. [277]

\* \* \*

You might have a little different location, but you can still make a comparison. [285]

\* \* \*

(Testimony of Vern A. Englehorn.)

A. From my observation it is good. These boys are top-notch farmers. I would like to have them farm some land for me.

\* \* \*

Q. How many sales did you find in that area that gave you assistance in determining a market?

A. Of course, in that process of using comparable sales [290] you will start out with more sales than you use. You eliminate many of them. I think I wound up with about six.

Q. Six that you felt were more comparable than the other sales?

A. Well, actually, there were four. I used more than four, but four that I felt were really legitimate sales in the first place, and that the land was somewhat similar.

Q. All right, on those comparable sales would you start and describe the one that you think is the most comparable, or a comparable sale?

A. I found one sale that I felt—in the first place, let me explain this. I used some sales in '55 in my original assignment; and when the final date was decided, I threw them out because I felt they were too far distant in time. I think the sales I used were all '56 sales. There is one, for instance, up on Grand Avenue that sold in July of 1956. This property fronts for more than a mile on Grand Avenue just straight north of Luke Field.

Q. (By Mr. LaPrade): Where?

(Testimony of Vern A. Englehorn.)

A. Straight north of Luke Field on Litchfield Road in Section 4. [291]

\* \* \*

Q. (By Mr. Eubank): You did consider that sale of July, 1956? A. Yes.

Q. What other sale did you consider?

A. I considered the sales that occurred on the west side of Luke Field that have been mentioned, and that is all. The dates and the price and the amount has not been mentioned in court as far as I know.

Q. What dates were those sales?

A. One of them was in December, or two of them in December, 1956—three of them, in fact, all in December, 1956.

Q. Who were those sales to?

A. Well, now, one of them was to Bill Robertson, a vegetable grower; and the other two were also to vegetable growers.

Q. What degree of comparability did those sales bear to the subject property?

A. Well, the productivity is about the same. They have water through there. It is a pump district. They are smaller properties, not as much, but they are planted to the same type of crops. They all have about the same percentage of cotton allotment on them as the subject property. They were in vegetables, and this is a good vegetable property; and so is the one west of it. They are not as well located from the [293] standpoint of accessibility, but you can get to them by going through

(Testimony of Vern A. Englehorn.)

Litchfield Park and going out Indian School Road. [294]

\* \* \*

Q. In that regard, then, did you determine what the available uses were for that property on March 11, 1957?           A. Yes.

Q. What, in your opinion, were the uses of that property?

\* \* \*

The Witness: Well, its highest and best use is for farming purposes now. The highest and best use doesn't necessarily mean the final use to which a property can be put, but it means that you or I or any other investor like us—people are buying land for an increase in value that they expect to get a few years hence as a result of the population pressure that is on the land, but it may be ten or fifteen years hence before it is used for what they consider its highest and best use. So one use for land is for investment by an investor, and in the meantime he uses it for agricultural purposes.

Q. (By Mr. Eubank): And the higher use is what? [295]

A. Right now I would say its highest and best use is to be used for agricultural purposes, but possibly for an investor who is looking forward to a higher use later, like the man testified yesterday he would sell for \$1,000 an acre for subdivision purposes.

Q. When we speak of the use of property, we are

(Testimony of Vern A. Englehorn.)

thinking of a group of possibilities, aren't we? We are not ruling out various possibilities as the market affects the land?

A. No, we are not ruling out any possibilities that a normal buyer and seller would think of.

\* \* \*

A. Yes, we have many examples of that right here in Phoenix. What was farm land a few years ago now is a shopping center.

Q. Your testimony is, then, that on March 11, 1957, the highest use of that property was what?

A. It was for agricultural production, but the normal buyer would be somebody who would have in mind that it goes up each year in value; so five years hence he probably would get more [296] for it.

\* \* \*

Q. How about the little subdivision that is circled on the board there?

A. That wasn't much of a subdivision.

Q. In your opinion you would discount that?

A. I don't think that would ever have much possibility of being a subdivision. It had kind of proven that to me. The houses that were there were not attractive. I wouldn't want to build beside it, and I don't think a normal resident in the valley would, whether he was connected with Luke Field or not. [297]

\* \* \*

(Testimony of Vern A. Englehorn.)

A Juror: What is that?

Mr. LaPrade: That is upon the land which was taken by the Government, and is a new structure put up by the Government. [302]

\* \* \*

Q. What I am getting at, Mr. Englehorn, is the fact of whether in your opinion there was severance damage in this taking?

A. There are other factors that are considered, of course. Unfortunately, the Internal Revenue Law requires we do come up with a severance damage figure.

Q. In this figure, the \$93,000.00, does that include [318] any element of severance damage?

A. That figure would include some, if there is some, yes, in any before and after approach.

Q. Is that basically the purpose for the before and after approach?      A. Well, yes.

\* \* \*

Q. Of these various crops.

Now, you have heard their opinion, that it would be impossible after a certain date, I think it was June, when the cotton got to a certain height, to spray it with an airplane, because of its proximity to the Capehart housing [319] project, do you recall that?      A. Yes.

Q. Do you have an opinion on that?

A. Well, it would interfere some, all right.

Q. Would it be possible, though, to continue, or

(Testimony of Vern A. Englehorn.)

do you know whether it would be possible to control insects and bugs with spraying other than by airplanes?

A. Well, some, yes. There are some sprays that are not injurious in any way to humans, and there are some that are.

In what degrees, I do not know exactly, and sometimes we do need to use those organic sprays that are a little bit dangerous. [320]

\* \* \*

Q. There has been quite a bit of testimony about that. What would your opinion in regard to the shape of that farm after the taking be?

A. Well, of course, a compact unit like it was before is always more desirable than to have a piece taken out in [321] that manner. It had some effect on the value of it.

Q. And did you consider that in arriving at your market value?

A. Yes, I did.

Q. After the taking?

A. Yes.

Q. Now, I haven't divided the \$93,000.00 that you have come up with there into the 132.40 acres.

Have you done that?

A. Well, it rounds off at \$700.

Q. That would be at \$700 an acre?

A. Yes, approximately.

Q. Mr. Englehorn, when you looked over the area out there, and in determining just what the best use of this property is, did you look into the,

(Testimony of Vern A. Englehorn.)

well, the market factors in regard to subdivisoning that area?

A. In that particular area?

Q. Yes.

A. Well, I looked into the value of land in the area. I didn't see any subdivision activity, nor did anybody indicate to me that they were interested in the subdivision activity in that area.

Q. Did you, oh, say within five or six miles of the subject property find subdivision activity?

A. Well, that would be about the limit. I am not sure [322] how far Youngtown is from there, but the witness yesterday testified as to that figure, somewhere around six or seven miles, as I remember.

Q. That is the closest?

A. Then there is a subdivision, of course, it is not too far down to Litchfield Park. It is just three miles down to the town of Litchfield Park, to the south.

Q. Is there a subdivision development there?

A. There is one on the east side of Litchfield Park.

Q. Do you know how extensive that development is?

A. Of course, one was built there several years ago, and the newest one I believe covers 40 acres. I am not sure. That is as of that time.

Mr. Eubank: All right. No further questions.

(Testimony of Vern A. Englehorn.)

Cross-Examination

By Mr. LaPrade: [323]

\* \* \*

Q. Can you tell us how much on a per acre average you have allowed for severance damage?

A. I have allowed a figure of \$9,000 for severance damage.

Q. Total of \$9,000? A. Yes.

Q. Allotted over 181 acres? A. 381.

Q. 381. I am sorry. Which would be——

A. Twenty some dollars per acre.

Q. Twenty some dollars per acre severance damage? A. Yes.

Q. As compared to the testimony of Mr. Atha, yesterday, I believe you were here, at \$300 per acre severance damage, do you recall that? [327]

A. Well, I don't recall his figure.

Q. If it was \$300.

A. If it was \$300, whatever it is, the record will show.

Q. You would be quite a little ways apart, wouldn't you?

A. I am not sure he understands what severance damage is.

Q. Let us assume he does.

A. Well, I am not about to.

Q. In any event, you are willing to say that there is some severance damage?

A. Oh, yes.

(Testimony of Vern A. Englehorn.)

Q. To the remainder of the farm, and you have allotted something for that, to the tune of \$9,000?

A. Yes.

Q. And you do not agree with Mr. Hansen, who testified that he allowed nothing?

A. If that's what he testified, obviously I don't agree. [328]

\* \* \*

Q. Would you disagree with Captain Combs, with his [329] statement that on May 11, 1957, there was a need for housing in that area?

A. Every military base I know of has a need for housing.

Q. Have you had any personal experience in building, the building trade, the building business, subdivision business, that is.

A. Not subdivision. I have had experience in building buildings.

Q. Have you had any experience in researching the financial structure of our modern day subdivision developments and how they operate them?

A. Well, I am fairly familiar with it, but I am not in that business, so I am not as familiar with it as those who are.

Q. You are aware, are you not, that the customary successful method in this modern age, in this Valley, is for a developer to buy a tract, to subdivide it, to put his streets and curbs in, to build model homes, he arranges for financing, then the prospective purchasers come on and buy a package

(Testimony of Vern A. Englehorn.)

unit, with ready-made financing, and everything, isn't that the general idea?

A. You don't need to limit it to this Valley. That's the way it is all over the country.

Q. That wasn't the kind of operation Mr. [330] Weber conducted on his subdivision on Litchfield Road, which is south of the Rubenstein property, was it?

A. I didn't look into that one at all. I didn't know the owner was even Weber.

Q. You didn't consider it? A. No.

Q. You felt that particular property was not a comparable sale, that activity, that is?

A. The activity, I considered it from the standpoint of what was going there. It kind of showed what the demand was.

Q. Did you eliminate it, as you stated, from your final opinion as a sound basis of assisting you in arriving at an ultimate conclusion?

A. No, it just was a factor that I observed in the area, that seemed obvious to me there wasn't much demand for housing.

Q. You say there wasn't a demand for housing?

A. No, otherwise they would buy that up and build houses on it.

Q. Didn't you just testify there was a need for housing?

A. Oh, yes, there is a need for housing, but it is here in the Valley all over.

Q. The other sales which you considered comparable, was one of them the Rubenstein sale on

(Testimony of Vern A. Englehorn.)

the southeast corner [331] of Litchfield Road and Glendale Avenue?

A. I took a look at it, but I think it occurred in late 1953, as I remember.

Q. In point of time, in your opinion, then, it was remote to this case?

A. There were other sales that were much closer in date that I preferred to use.

Q. I am referring to that particular sale. Wasn't it in your opinion too remote to serve as an accurate guide or comparable sale, in arriving at values in this particular instance?

A. Of course, you don't throw everything out. You consider all sales. You don't blank them from your mind, but there are some you consider a lot more than others.

Q. Were the other properties you considered fronting on Glendale Avenue? A. No.

Q. Were they in front of Luke Field?

A. No.

Q. Were they producing three bales per acre on their cotton yield?

A. They were producing about that, and also vegetables.

Q. Where were they, sir?

A. One of them was on Grand Avenue, frontage on Grand Avenue. [332]

\* \* \*

Q. And there may be a market for investors for their personal future speculative use?

(Testimony of Vern A. Englehorn.)

A. Right.

Q. Although it is a market, though, isn't it? [333]

A. Yes.

Q. And if there are people ready, willing and able to buy, even if it is for their own speculative future use, that is a market which must be considered, isn't that right?

A. Well, they set the market, the buyers in general set the market. If they are buying land at a set figure, that is the market.

Q. It doesn't make any difference what their motive is?

A. No, they are the buyers.

Q. Their motive is no concern of the appraiser, is it?

A. No, not necessarily. There are all kinds of reasons why people buy property.

Q. And before arriving at market value, don't you have to determine what is the highest and best use of this land, and what is the demand for that use in order to arrive at your market?

A. That is part of the process in arriving at the market value.

Q. And you stated you, you stated that you in recognizing differences in other comparable sales in the vicinity, you must consider the differences as well as the similarities? A. Right.

Q. Were you eliminating differences in arriving at [334] your opinion, or were you adding up comparisons? Which were you doing?

A. Well, it is hard—you understand that an

(Testimony of Vern A. Englehorn.)

appraisal process is an opinion value based on facts, and you can't use formulas like you can in other exact sciences.

It is not an exact science.

Q. Did you assume that farming was the only market value for this property?

A. I think I made it pretty clear on what I thought the use of that property was as of that date.

Q. Can you tell us any reason why an experienced subdivider could not have subdivided and built upon the land, and sold or rented units and earned a profit on his investment in March of 1957?

A. Why, now?

Q. Can you tell us any reason why not?

A. Well, there weren't any of them doing it in the area.

Q. I am asking you if there is any reason why it couldn't have been done by an individual, just as I say is being done by the Government?

A. Sure, he could have done it. He could have risked his capital if he wanted. That is his prerogative. He could have gone in there and do whatever he wants with it.

Q. You stated that you are not an expert as a chemist, [335] I believe you stated, in connection with this dusting business?

A. I think the record will show I said agricultural chemist, if that makes any difference.

Q. Agricultural chemist. And in that regard you do know enough about it to know that a cotton gin

(Testimony of Vern A. Englehorn.)

will not finance a farmer on a cotton crop if they suspect that in the midst of the season he will be prohibited from dusting his crop?

A. Well, I expect that is right, if he is sure of that.

Q. If that were to be the fact, your firm wouldn't be interested in loaning any money for Northwestern Mutual for that purpose, would you?

A. We don't loan on cotton crop. We loan on the land.

Q. Would it make any difference, sir, if it was just farm land, if it couldn't be farmed because of dusting difficulties? Your investment wouldn't be very good, would it?

A. Of course, actually here in the Salt River Valley, we loan just about as much money on the farm that doesn't have a cotton allotment as one that does. I say here in the Salt River Valley.

Q. Is that in the Salt River Valley?

A. Yes, in the Salt River Valley area. [336]

Q. I mean the Baker-Roach land, does that hold true there?      A. Yes.

Q. And it is true when the cotton gets high enough, you can't very well do it by machine spray, can you?

A. No, it gets a little bit hard.

Q. If it is determined by experts in the field that there is a malady on the crop of some sort that needs to be dusted by plane, that is what you have to do to protect your crop, isn't it?

A. Of course, that was an opinion, too. It

(Testimony of Vern A. Englehorn.)

wouldn't be enough proof to me. You have seen them dust cotton, and they don't stop the traffic on the highway going right by their field. The highway goes right by cotton land they are spraying, and they don't stop traffic with a red flag.

Q. Do you have an opinion, as a layman, as to what might develop in a school, and in the middle of a housing project if there was dusting adjacent to it? A. I took that into consideration.

Q. Do you think it would have any effect on the remainder market value of this land?

A. Yes.

Q. How much did you allow for that?

A. I didn't allow any per-acre figure for that one [337] item, because there are some offsetting factors. [338]

\* \* \*

Q. What is the best piece of that whole farm?

A. Of course, the best piece is the east half of Section 3, that 320-acre tract.

Q. Did you allow any speculative value on the frontage on Glendale Avenue, on arriving at your "before" value?

A. I arrived at the property as a whole, and I took into consideration the fact that it does front on Glendale Avenue.

\* \* \*

Q. I take it, then, it is your opinion that Tract H-801 could not have been subdivided and economically developed on March 11, 1957?

(Testimony of Vern A. Englehorn.)

A. Possibly it can, but it is my opinion that it would not command more than \$700 an acre. [339]

Q. Are you acquainted with any land with a built-in demand for subdivision purposes anywhere in this Valley that can be bought for \$700 an acre?

A. That they are subdividing right now?

Q. No, sir, with a built-in demand.

A. You are assuming something there.

Q. I am assuming it for the purpose of my question to you. A. I can't assume that.

Q. Assuming that there is a need for housing on March 11, 1957, at or about Luke Air Force Base, and assuming that this land is suitable for subdivision, and assuming anything else you want to assume, is there any reason why it could not have been successfully subdivided and economically operated by a competent subdivider?

A. Well, of course, I don't know how you are going to assume all those things.

When you assume all those things, you are bound to come up with a wild figure. An appraiser uses facts. He doesn't assume anything.

Q. Doesn't a point of time come when land no longer has value for one purpose, and the point of no return is reached, and it takes on other values?

A. Yes, but that doesn't set the value. You are talking about income, now, aren't you? Market sets the value. [340]

Q. You are acquainted with the fact that the school district paid \$19,000.00 for 16 acres?

A. They got 19 acres.

(Testimony of Vern A. Englehorn.)

Q. They got 3 for free.

A. They got 19 acres for \$19,000.00, whichever way you want to look at it.

Q. Did you check the deeds on record?

A. Yes, the deeds are recorded, and the Warranty Deed is recorded, and simultaneously a gift deed is recorded, and the revenue stamps are in the amount of \$6.60.

Q. Did you assemble with the school officials to determine what the bargain was?

A. I agree with the figures that were recited this morning.

Q. You heard Mr. Baker's testimony in connection with having given the school district 3 acres?

A. Yes, sir.

Q. Do you have any quarrel with that?

A. No, that was after the date of taking.

Q. Then if negotiations were made, and the deal was sealed before the taking, you still wouldn't accept that \$1,100, approximately, for the 16 acres as a valid comparison?

A. Of course, you know we did it as of March 11th. That actually happened after that.

Their minds could have changed, you know, before [341] they finally signed it.

Mr. LaPrade: That is all.

(Testimony of Vern A. Englehorn.)

Redirect Examination

By Mr. Eubank: [342]

\* \* \*

Q. So on Government's Exhibit 11, the first photograph, they can see the ground the way it was out there in December?

A. That is a waste ditch taking the water into the sump.

Q. And this would have been taken at the edge of the sump, I take it?

A. Just west of the sump.

Mr. Eubank: Do you have any objection to these? [344]

Mr. LaPrade: No. No objections. [345]

\* \* \*

The Court: It now becomes the Court's duty to instruct you as to the law that applies to this case.

You know this is a condemnation suit brought by the United States under certain Acts of Congress. You are instructed that the case involves the taking by the United States of America for a public purpose of the fee simple estate or entire title to Tract No. H-801, consisting of 132.40 acres, described as follows:

Tract No. H-801, two parcels of land in the County of Maricopa, State of Arizona, described as follows:

Parcel 1, the Southwest one-half, Section 3, Township 2 North, Range 1 West, Gila and Salt River Basin Meridian, except the East 442 feet thereof.

Parcel 2, the North 100 feet of the East 442 feet, of the Southeast one-quarter of Section 3.

This tract, consisting of 132.40 acres, as I have stated, is a part of a farm unit owned by the defendants, consisting of 510 acres, more or less.

After the Government's taking, there remains 388 acres, more or less, on the defendants' farm.

The taking of property by the United States Government in the exercise of its power of eminent domain under the United States Constitution implies a promise to pay just compensation therefor. [352]

Just compensation, often referred to as market value, means the compensation which is just not only to the defendants, but to the Government.

In arriving at just compensation or market value, you are to determine the market value of Tract No. H-801 on March 11, 1957.

This date, March 11, 1957, is the date of taking, or the date on which the Government took the defendants' tract of land.

Consequently, the market value of Tract No. H-801 on March 11, 1957, is the only issue upon which you are asked to decide in this case.

I instruct you that by market value is meant the amount of money that the property in question will bring if sold in the open market under normal conditions, with a reasonable time within which to find a purchaser, the seller being willing but not

obliged or forced to sell to a buyer ready, willing and able, but not obliged to buy, and being allowed a reasonable time to investigate the property, and all the uses for which it is adapted.

In your deliberations on market value or just compensation, you are not to consider the price a tract of land would sell for under special or extraordinary circumstances.

You will consider only the market value of [353] the land—the market value of the land as if it were sold on the open market between a willing buyer and seller under ordinary circumstances on March 11, 1957.

It is not, therefore, a question of the value of the property to the defendants, or a question of the value of the property to the Government. It is a question of market value on March 11, 1957.

Just compensation includes all elements of value that inhere in the property. But it does not exceed market value fairly determined.

The sum required to be paid to Messrs. Roach and Baker does not depend solely upon the uses to which they have devoted their land. But it is to be arrived at upon just consideration of all the uses for which it is suitable, and the highest and most profitable use for which the property is adaptable and needed, or likely to be needed in the reasonably foreseeable future, is to be considered, not necessarily as the measure of the value, but to the full extent that the prospective demand for such use affects the market value while the property was privately held.

Elements affecting value that depend upon events or combination of occurrences, which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from your consideration, for that would be to allow mere speculation and conjecture to [354] become a guide for the ascertainment of value.

In this case where an entire tract has been used and treated as an entity, it should be so treated in determining market value.

As I stated before, Tract H-801 is a part of the farm unit owned by the Defendants.

It is a rule of law that in the condemnation of a part of a tract of land owned by the defendants, just compensation is the market value of the entire tract before the taking, minus the market value of the remaining tract after the taking of Tract H-801 on March 11, 1957.

The answer will be just compensation or market value of the tract taken by the Government, plus severance damage to the remaining tract, if any. This is commonly referred to as the "before and after" rule.

Severance damage is more easily described and defined.

For example, as in the case where only a part of a tract is taken from the owner, the owner's just compensation includes any element of market value arising out of the relationship of the part of the tract taken to the entire tract.

The injury to this relationship, and the element

of market value is often spoken of as severance damage.

The test of whether or not severance [355] damage exists in the taking is the existence of loss or impairment in the market value of the remaining land after the taking, which can be fairly attributed to the taking.

If you find from the evidence that by virtue of the taking of the 132.40 acres the value of the remaining land has decreased, then in order to determine the amount of money which the Defendant should recover in this proceeding, you will first find the fair and reasonable market value of the entire 510-acre tract of land at the time of the taking, and then you will find the fair and reasonable market value of the 380 acres of land which were left to them immediately after the taking.

The difference between these two figures will be the amount that they should recover.

If you find, on the other hand, that the taking of the 132.40 acres did not diminish the remaining 388 acres, that is, did not decrease or diminish its value, then the defendants would not be entitled to any severance damages, and you will award them simply the fair and reasonable market value of the 132.40 acres of land that were taken, said value to be determined as of the date of taking.

You are further instructed that the burden of proof is upon the defendants to establish by a preponderance of the evidence the existence and extent of severance damages, as well as the fair and

reasonable market value of the [356] portions of lands that were actually taken.

In applying the market value standard, no account is to be given to values for necessities peculiar to the Defendant or the Government. But consideration should be given only to such matters as would affect the ordinary willing buyer and seller in negotiating a fair price.

To reach this result, the Jury may consider all matters which would naturally influence agreement upon a price by buyers and sellers willing but not compelled to bargain.

Obviously, the uses to which the property may be put vitally affect its value, but use in this sense does not mean mere physical adaptability. It is use adaptability which concerns us.

Its value is to be determined as of the time of taking. It is use adaptability apparent at that time.

Since market value is the standard sought, it is use adaptability which would affect market value at the time of taking, that is, which would influence a seller or buyer arriving at a fair price then.

The above considerations limit the uses which may be shown.

The Defendants and not the Government have the burden of establishing by the fair preponderance of all the evidence—that simply means the greater weight of [357] the evidence—the market value of the lands taken.

By a fair preponderance of the evidence is not necessarily meant the greater weight and number

of the witnesses, but the greater evidence in weight and credibility.

In considering all the evidence in the case, the evidence that tends to establish a given fact outweighs the evidence to the contrary.

If after considering all of the evidence in the case, you find that the evidence upon any question is evenly balanced, you shall answer such question against the Defendant who has the burden of that issue, for in such a case there would be no preponderance in favor of such proposition.

You are instructed that the burden of proving the highest and best use of the property contended by the defendant landowners, as well as the burden of proving the fair market value of Tract No. H-801, rests with the defendant landowners whose property is taken, and not upon the Government.

Severance damage defined here earlier in these instructions must also be proven by a preponderance of the evidence by the defendant landowners.

A number of witnesses have testified as to their opinions of the value of the properties under consideration.

In connection with the opinion evidence in general [358] that has been produced in this case, the Court instructs you that opinion evidence is not a statement of fact, but is a mere statement of the witness' opinion.

It is your duty to determine whether such opinions are correct or erroneous, and in arriving at your conclusion you should consider the grounds upon which the witnesses based their opinions, their

experience and knowledge of the matters about which they testified, the evidence in the case, and the reasonableness or unreasonableness of their opinions as viewed in the light of their knowledge and experience, using in this connection your own common sense, knowledge and experience.

You are the sole judges of the credibility of the witnesses, and of the weight that should be given to their testimony, including the testimony of the opinion witnesses. With that, the Court has nothing to do.

It is the province of the Court to declare to you the law applicable to any phase of the testimony, and it is your duty to apply that law to the testimony, and to return a verdict in connection with the tract of land in accordance with both the law and the evidence.

You are the judge of the evidence of each witness, by the reasonableness or unreasonableness of his testimony; the means of knowledge of that about which he testifies, the manner and deportment of the witness while testifying, [359] his interest, if any he has, his bias or prejudice, if any he manifests, and give all the testimony the weight it should have in reaching a conclusion as to what is the truth of the case.

In passing upon the testimony in the case, you are to exercise your common sense, your reason, and your judgment in the light of your experience in life, and your observation of the conduct of people, in ascertaining from the whole testimony what the truth is, and base your verdict upon that.

You are not to consider any personal loss or gain to either party. Market value of the property on the date of taking is the only problem under consideration.

Now, a form of verdict has been prepared for your guidance, which reads:

“We, the Jury, duly impaneled and sworn in the above-entitled action, upon our oaths do find that the fair market value of the Baker and Roach land, Tract No. H-801, as of March 11, 1957, is ..... dollars.”

Now, if severance damage is proved, you will insert in the blank on the form of verdict whatever sum you may agree upon as representing the difference between the fair and reasonable market value of the entire 510 acres immediately prior to the taking, and the fair and [360] reasonable market value of the 388 acres remaining after the taking.

If severance damage is not proved, you will insert in this blank space whatever sum you may agree upon as representing the fair and reasonable market value of the 132.40 acres of land that were actually taken as of the date of taking.

You will now retire from the courtroom for a few minutes.

(The Jury retired from the courtroom.)

The Court: Do counsel have any objections or exceptions to the instructions?

Mr. Eubank: I have two objections on the instructions, if the Court please.

First, the Court erred in failing to give Plaintiff's requested Instruction No. 7, relating to comparable sales.

If comparable sales are the best guide to market value, the Jury should be informed of this fact, especially in this case where speculation and conjecture are the basis for the Defendants' theory of the case.

Two, the Court is committing error by failing to give Plaintiff's requested Instruction No. 11, the first paragraph thereof.

The condition of the Defendants' farm has [361] changed since the date of taking, March 11, 1957, and the date of the view, November 21, 1958.

The Jury should be clearly advised that they are not to consider the present activity by the Government on Tract H-801, as the construction work which they saw was subsequent to the date of taking.

The Court: All right.

Mr. LaPrade. I have no objections to the instructions, your Honor.

The Court: All right. Will you call in the Jury again, please.

\* \* \*

[Endorsed]: Filed May 7, 1959. [362]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD  
ON APPEAL

United States of America,  
District of Arizona—ss:

I, William H. Loveless, Clerk, of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records of said Court, including the records in the case of United States of America, Plaintiff, vs. Arthur E. Baker, Doris M. Baker, John L. Roach and Bettie Jo Roach, et al., Defendants, numbered Civ-2597 Phoenix, on the docket of said Court.

I further certify that the attached original documents bearing the endorsements of filing thereon are the originals of said documents filed in said case, and that the attached copies of minute and civil docket entries are true and correct copies of the originals thereof remaining in my office in the City of Phoenix, State and District aforesaid.

I further certify that the said documents, together with the original exhibits transmitted herewith, are certified as the record on appeal in said cause, and the same are as follows, to wit:

1. Plaintiff's Complaint.
2. Plaintiff's Notice of Condemnation.
3. Plaintiff's Declaration of Taking.
4. Order for Delivery of Possession.
5. Stipulation that Defendants shall be permitted to remain in possession until September 1, 1957.

6. Stipulation that Defendants Baker and Roach be permitted to remain in possession until November 1, 1957.

7. Answer of Defendants Baker and Roach to Complaint.

8. Plaintiff's Motion to Strike Portions of Defendants Baker and Roach Answer.

9. Requested Instructions.

10. Verdict.

11. Plaintiff's Motion for New Trial.

12. Minute entry of December 15, 1958 (Order denying Motion for new trial).

13. Final Judgment as to Tract No. H-801.

14. Plaintiff's Notice of Appeal.

15. Motion and Order Extending Time for Filing Record and Docketing Appeal ninety days.

16. Reporter's Transcript.

17. Designation of Contents of Record on Appeal.

18. Civil Docket Entries.

I further certify that the following original exhibits are transmitted herewith as a part of this record on appeal, as designated, to wit:

Government's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, in evidence.

Defendants' exhibits A, B, C, D, E and F, in evidence.

Witness my hand and the seal of said Court this 8th day of May, 1959.

[Seal]      /s/ WM. H. LOVELESS,  
Clerk.

[Endorsed]: No. 16461. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Arthur E. Baker, Doris M. Baker, John L. Roach and Bettie Jo Roach, Appellees. Transcript of Record. Appeal From the United States District Court for the District of Arizona.

Filed and Docketed: May 11, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 16,461

UNITED STATES OF AMERICA,

Appellant,

vs.

ARTHUR E. BAKER, et al.,

Appellees.

### STATEMENT OF POINTS ON APPEAL

The United States of America, appellant, intends to rely on the following points in its appeal:

1. The District Court erred in refusing to grant the Government's requested instruction number 7 as follows:

Comparable sales at arms length in the open market of real property, often referred to as similar sales, that occurred before the date of taking are the best evidence of market value.

2. The District Court erred in refusing to grant so much of the Government's requested instruction number 11, as follows:

With regard to the view that you took of Tract H-801 Friday afternoon, you are directed to remove from your consideration of market value the fact that the Government is presently making use of the condemned tract of land. You are to value the tract in the condition that it was in on March 11, 1957. The testimony of the

Government's and Defendants' witnesses will be helpful to you in recreating the condition of the tract at that time.

You are further instructed that Defendants are not entitled to compensation for loss of any future gain they might have hoped to realize from the tract over and above its fair market value. This is true also with respect to the Government. \* \* \*

3. The District Court erred in failing to rule that comparable sales were the best evidence of market value.

4. The District Court erred in failing to rule that the use made of the property by the Government after the date of taking should not enter into the consideration of market value on the date of taking.

5. The District Court erred in failing to grant the Government's motion for new trial.

UNITED STATES OF

AMERICA,

PERRY W. MORTON,

Assistant Attorney General;

ROGER P. MARQUIS;

/s/ ROBERT S. GRISWOLD, JR.,

Attorneys, Department of

Justice, Washington 25, D.C.

Certificate of Service acknowledged.

[Endorsed]: Filed May 28, 1959.

[Title of Court of Appeals and Cause.]

### STIPULATION

Comes Now the appellant, United States of America, by Perry W. Morton, Assistant Attorney General, and the appellees, Arthur E. Baker, Doris M. Baker, John L. Roach, and Bettie Jo Roach, through their attorneys, Louis B. Whitney and Paul W. LaPrade, and herewith stipulate and agree that in the foregoing cause on appeal to the United States Court of Appeals for the Ninth Circuit, that those certain exhibits of record in evidence that have been counter-designated by the appellee for inclusion in the record of said cause on appeal, to wit:

Defendants' Exhibit A in evidence: Map to scale.

Defendants' Exhibit B in evidence: Aerial photograph.

Defendants' Exhibit C in evidence: Aerial photograph.

Defendants' Exhibit D in evidence: Irrigation Map.

Defendants' Exhibit E in evidence: Land use map.

need not be printed as such in the record of said appeal, but rather, may be considered by the Court as a part of the designated record on appeal in their original form, as certified to the Court by William H. Loveless, Clerk of the United States

District Court for the District of Arizona, in his certificate of record bearing date of May 8, 1959.

Dated this 22nd day of July, 1959.

THE UNITED STATES OF  
AMERICA,

Appellant,

By /s/ PERRY W. MORTON,  
Assistant Attorney General.

ARTHUR E. BAKER,  
DORIS M. BAKER,  
JOHN L. ROACH, and  
BETTIE JO ROACH,  
Appellees,

By /s/ PAUL W. LaPRADE,  
Attorney for Appellees.

[Endorsed]: Filed July 27, 1959.

